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George Frederick Houghton

MR. HOUGHTON'S ADDRESS.

an outline of the
Controversy of the New Hampshire
Grants, with a sketch of the
Life & Services of Col^d Seth Warner
Address before the Legislature of
Vermont, Oct. 20, 1848.

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OFFICE OF THE SECRETARY OF THE SENATE, }
Montpelier, Vt., Oct. 23, 1848. }

DEAR SIR:—By a Joint Resolution of the two Houses, this day adopted, we are directed to request you to furnish us with a copy for publication, of “the able and interesting Address prepared by you for delivery at the Annual Meeting of the Vermont Historical and Antiquarian Society,” and, in compliance with a previous Joint Resolution, pronounced before the Members of the Legislature in the Representatives’ Hall on Friday evening, the 20th inst.

Trusting that you will find no objection to the course indicated by the Resolution alluded to,

We are very respectfully, Your ob’t serv’ts,

D. W. C. CLARKE, Secretary of the Senate,

F. F. MERRILL, Clerk of the House of Representatives.

GEORGE F. HOUGHTON, Esq.

Montpelier, Vt.

MONTPELIER, Vt., 24th October, 1848.

GENTLEMEN:

I hasten to acknowledge the receipt of your complimentary joint-letter of yesterday’s date requesting for the press, on behalf of the two Houses of the General Assembly, a copy of the Address pronounced by me before the Members of the Legislature, at their request, on the evening of the 20th inst.

The address was prepared for delivery before the “Vermont Historical and Antiquarian Society,” and with no idea that, under any combination of circumstances, would its publication be invited.

If it be thought, however, that any beneficial influence can be anticipated from its publication, it is cheerfully placed at your disposal.

I am, Gentlemen, Very respectfully,

Your obedient servant,

GEORGE F. HOUGHTON.

Messrs. D. W. C. CLARKE, Secretary of the Senate,

F. F. MERRILL, Clerk of the House of Representatives,

ADDRESS.

MR. PRESIDENT, GENTLEMEN OF THE SENATE AND HOUSE OF REPRESENTATIVES :

It is proper to state to the dignified bodies, in compliance with whose invitation I have the unexpected honor to appear in this Hall, that the address, which I am about to pronounce, was prepared for delivery before "The Vermont Historical and Antiquarian Society."

The main features of my address, I trust, are in keeping with the train of thought naturally suggested by the presence of the memorials of the gallant bravery of our forefathers. This circumstance has, undoubtedly, prompted an act of courtesy, which transfers me from the customary scene of historical discourses to this Hall of Legislation.

This announcement may possibly prevent the statement of facts and comments thereon, in which I shall indulge, from being regarded as ill-suited to the proprieties of the occasion which has assembled us together this evening.

The spirit, embodied in the act by which the "Vermont Historical and Antiquarian Society" was incorporated, has its birth in that curiosity, which prompts to an inquiry into the lives and adventures of their ancestry. Men of leisure, pleased with the recreation which such investigations afford, gladly push their researches beyond the period in which written memorials are preserved, and carefully scrutinize the authenticity of such events as are entrusted to memory or oral tradition. If it be true that the new world cannot, of necessity, yield scope so ample for antiquarian research as the old world with its immemorial systems and time-honored institutions, yet archeological enthusiasts in our midst can be profitably busied in seeking among the vestiges of the past for those truths, which it is the peculiar province of history to exhibit and illustrate. In this way, Antiquarianism must be recognized

as a science and, being allied to History, it will be a safe indicator of an advanced stage of intellectual refinement. Isolated facts, when brought forth in the disjointed and piece-meal forms in which they are often, not to say *always*, found, demand profound study to test their importance and careful collation to prove their accuracy. Through such an intellectual ordeal must all facts be passed before they can be available as real and practical history. To this audience, I need not remark, that to foster this genuine spirit of antiquarian and historical research, which requires for its nutriment and healthful growth, liberty of thought, the exercise of critical discussion and accurate observation, is the especial mission of the Society to which I have alluded.

The *utility* of a public institution, formed for the express purpose of exploring, collecting and preserving valuable materials relating to the early settlements of the State, cannot reasonably be debated. The *importance* of such an association, furnishing as it must, a safe repository for the discoveries which, from time to time, gladden the hearts of those scientific and inquisitive men who gird on the antiquarian's armor, has been tested by the experience of the Old World and the New.

The materials requisite for the reliable history of a country are not always accessible to the anxious student. Cumbersome piles of moth-eaten documents that lumber offices of record, rare publications of an early date, which are only known to the pains-taking and never-tiring inquirer, are every-day impediments in the path of historical research. These obstacles, it must be remembered, are insurmountable to those who have not pecuniary means much more liberal than students, in general, can command. The conclusion seems unavoidable, then, that *combined* efforts, on the part of those who either assume a personal interest in such inquiries or are disposed to facilitate the labors of others for the public good, are indispensable.

I am not addressing, as I intended to do, an Association engaged in a literary enterprise and aiming at the collection as well as the diffusion of historical knowledge, but yet I presume that I shall win universal acquiescence to the proposition that there can be no limits to the advantages which will flow from such literary combinations. Every state in the American Union, with a rare ex-

ception, can boast of a flourishing Historical Society. This encouraging fact ought to excite less surprise in our minds than the mortifying truth that ten years have not elapsed since the "Vermont Historical and Antiquarian Society" has won for itself a "local habitation and a name."

The "Vermont Historical and Antiquarian Society" owes its birth to the persuasion that associations are more promotive of science and literature than individual effort. If, at this late hour, it be asked what are the intended objects of such a society, the answer could be given in the words of SIR WILLIAM JONES, who addressed the members of the Asiatic Society in Calcutta in 1784. "The objects of this Association," said he, "are Man and Nature—whatever is or has been performed by the one or produced by the other. Human knowledge has been elegantly analyzed according to the three great faculties of the mind, Memory, Reason and Imagination, which we constantly find employed in arranging and retaining, comparing and distinguishing, combining and diversifying the ideas which we receive through our senses or acquire by reflection: hence the three main branches of learning are History, Science and the Arts."

My appearance upon this occasion, more accustomed as I am to professional study than historical reading, must be regarded as an expression of my interest in this literary institution. I look upon its establishment as a promise and a means of increased intellectual activity in departments of knowledge too often underrated and neglected. It was not consonant, therefore, to my feelings to refuse to say a cheering word or to exert a friendly effort on its behalf.

To select from the great multiplicity of themes one becoming the present anniversary, has not been without its difficulties.—With some misgivings, however, as to my ability to do justice to my subject, I propose to invite your attention to a brief recital of the Life and Services of Col. SETH WARNER, intending incidentally to illustrate, in connection therewith, some of the characteristics of the early settlers of Vermont, who took active parts in that period of its history commonly known as the '*Controversy of the New Hampshire Grants.*'

Every historical era has peculiarities to distinguish it from other times, and every man, who has been largely endowed by Nature

with gifts to render signal service to his country in times of peril, must, of necessity, be distinguished from his fellow men. Any apology for examining into those gifts and characteristics would be superfluous. From such an examination, conducted without prepossession or prejudice, we are enabled to determine the idea that was uppermost in the public mind when those gifts and characteristics were forced into active requisition. I adhere to the doctrine, to which Time has affixed his imprimatur, that the sentiments which lie deepest in the heart, or the controlling opinions which sway the mind, of a people will surely betray themselves in their public deeds and words. In other language, the national idea must sooner or later find utterance in the Acts of a nation—must find a voice in its Literature and impress itself upon its Laws!

Prior to the first civilized establishment within the present limits of this State, the whole of the territory, now known as VERMONT, had been in the undisputed possession of the red man. Here the Iroquois, the Coosucks, a branch of the St. Francis tribe of Indians, pursued the pleasures of the chase. They regarded the country as more suitable for a hunting ground than for a permanent residence. Before the erection of Fort Dummer, in the township of Brattleboro', no settlement had been effected by the white man. Vermont seemed to be, during the Colonial and Indian wars, a debateable ground on which many a guerilla battle was fought. Situated, as it was, equi-distant from the Franco-Canadians, with their savage colleagues on the one hand, and the Anglo-Americans, on the other, it was constantly exposed to the incursions and depredations of both. The dense forests of the Green Mountains became the favorite lurking places of the wielders of the tomahawk, and resounded with the war-whoop of those savages who were willing to be allies for either of the contending parties. For these reasons, actual settlements were impracticable and perilous; and it was not until the year 1760 that civilized establishments were found upon the banks of the River Connecticut. The scantiness of the population cannot be attributed to any other cause than the local situation of Vermont with respect to the various Indian nations which prevented its becoming a permanent residence for the red man, in earlier times, and afterwards prevented its being settled by the French and English during the Colonial Wars.

The fertility and value of the lands lying between the present geographic limits of Vermont, however, had become widely known. During the French war, a road had been opened by the New England troops from Charlestown in New Hampshire, to Crown Point in New York, and, by passing frequently through these lands, their character had been, of course, determined. When the final conquest of Canada had removed one of the dangerous obstacles in the way of settling in this part of New England, these lands were eagerly sought for by those who wished to own the land they cultivated and to cultivate the lands they owned.

Land-titles, at that date, were granted under Letters Patent from the Crown by BENNING WENTWORTH, the then Captain General, Governor and Commander in Chief of His Majesty's Province of New Hampshire. That Province claimed and exercised jurisdiction over territory extending from the West bank of the Connecticut River to a point esteemed to be twenty miles East of the river Hudson, so far as that river extended to the Northward, and after that, as far Westward as Lake Champlain. By the year 1761, no less than 60 townships were granted on the West side of the Connecticut River, and within a year or two from that date, the whole number of grants had amounted to one hundred and thirty-eight.*

Upon the fees and other emoluments which Gov. WENTWORTH received as compensation for those grants, the Government of New York looked with an envious eye. Inasmuch as the Governor of New Hampshire reserved five hundred acres of land in every township for himself, he was evidently laying the basis of an immense fortune. Wishing to thwart all such covetous procedure, and desirous of the profit arising from the sale of those lands, CADWALLADER COLDEN, Esq., Lieut. Governor of His Majesty's Province of New York, on the 28th December, 1763, issued a proclamation, "commanding the Sheriff of the County of Albany to make a return of the names of all persons who have taken possession of lands under New Hampshire grants," and claiming jurisdiction as far East as Connecticut River, by virtue of grants made by Charles II. to the Duke of York in 1664 and 1674.

*See appendix.

At this period of time, came from the Colony of Old Connecticut, from the town of Woodbury, in the County of Litchfield, the young Pioneer who was destined to take a prominent part in the various controversies and struggles which were incident to the early settlement of a new State. The parents of this Pioneer had purchased a tract of land in the township of Bennington, and, about the year 1763, had removed with their family to that town. He was distinguished in his youth, as he was afterwards in his manhood, for the "solidity and extent of his understanding."—With no other scholastic advantages than such as a common school education afforded, yet those advantages were employed to the best possible purpose; and, at his majority, he was possessed of a fund of knowledge, which was as serviceable as if it had been obtained in the classic walks of Harvard, or under the elms of Yale.

Coming to the State of Vermont, as SETH WARNER did, while the soil was yet but poorly tilled, while the forests were uncleared, while no school-house or church had been erected, there was, it would seem to us, but little to encourage the mind of that Connecticut boy to become a resident among the Green Mountains. But the rivers, lakes and ponds were filled with large quantities of excellent fish. The forests abounded with every variety of game, and in the dells and on the hills could be seen flowers of rare excellence and beauty. "Solomon in all his glory was never arrayed like one of these." Young WARNER was a skillful botanist. He sought, partly from necessity and chiefly from choice, to render himself familiar with such plants and roots as were indigenous to Vermont. We are assured that no man acquired more information touching the nature and properties of such natural productions than he. With such invaluable knowledge he was exceedingly useful in new settlements, where he could administer relief when medical assistance could not easily be obtained.

Young WARNER was a huntsman too. The ready pen of that romance-writer, who cordially sympathizes with every effort to learn the character of the early settlers of this State, represents him under the character of Col. WARRINGTON as a successful lover of the pleasures of the chase. Traveling back eighty years, if we wish to see him as he was, we find him an inhabitant of one of the rude cabins that were thinly scattered through the wilderness. We observe him felling the forest, or tilling the soil which

had never been touched by any hand before. There will be found around his shieling, unbroken silence, save when the stroke of his axe awakens the echo, or the howl of the wolf disturbs the dull ear of midnight. In the midst of all his labors, as well as his pastime, he is compelled to be ready with the loaded musket to repel the lurking savage. "You see a man of a very fine, and even majestic, appearance. Though tall and muscular, so compactly and finely set are his limbs that his contour presented nothing to the eye in the least disproportioned or ungainly. His features seem to correspond in regularity of formation to the rest of his person, while his countenance is rather of the cool and deliberate cast, indicative, however, of a mild, benevolent, disposition, as well as a sound, and reflecting intellect. Every development, indeed, whether of his shapely head or manly countenance, goes to show a strong, well-balanced character, and one capable of action beyond the scope of ordinary men."*

It is said by coteremporaries who have seen him at the head of his brave "Green Mountain Rangers," armed and equipped for duty, that no man could bestride a horse with more grace and dignity than he. With a broad and intellectual forehead, relieved with a profusion of nut-brown hair, and with sparkling blue eyes beaming forth under eye-brows most beautifully arched, his physiognomy gave unmistakeable signs of an intelligent, courageous and energetic man.

Such was the skillful huntsman and the practical botanist, before the blast of War blew in the ears of the early settlers of the New Hampshire Grants. Continuing to use his quick eye-sight and steady arm in hunting after game in the forests, and indulging his scientific taste in the dells and dingles where medicinal plants were most abundant, he became widely known as one upon whose usefulness and humanity, reliance could be reposed. And thus was laid the basis of that reputation which, in aftertimes, rendered him so influential and powerful for good when "the slings and arrows of outrageous Fortune" were hurled at those who, like himself, had pitched their tents among the green hills of Vermont. Here, among the mountains and valleys of the so called "Switzerland of

*See the "Green Mountain Boys," page 16.

America," the love of Nature shone in his soul, as undying lustre glistens in the diamonds which sparkle in the diadem of Beauty! Here, in the valleys of Vermont, through which messages are now sent by the aid of a power which outstrips even the sun in its flight, and here, among the mountains, where the iron-horse now puffs its way, with untold wealth following reluctantly in its wake, once lived and loved that man whose heart overflowed with the love of Freedom for which all huntsmen are proverbial, and whose soul was fired with that enthusiasm which burns brightly and gloriously in the breast of every devotee of Natural History. Truly this Vermont was a fit place to nurture such qualities of the head and heart.

"Hail, land of Green Mountains! whose valleys and streams
Are as fair as the muse ever pictured in dreams;
Where the stranger oft sighs with emotion sincere,—
Ah! would that my own native home had been here!"

"Hail, land of the lovely, the equal, the brave,
Never trod by the foe, never tilled by the slave;
Where the love of the world to the hamlet is brought,
And speech is as free as the pinions of thought."

The controversy between the Governors of New York and New Hampshire, relative to jurisdiction over the territory now constituting the State of Vermont, was, meanwhile, in no wise abated.—That there was an acrimonious spirit gradually growing up between the two Colonies, the following extract from Gov. WENTWORTH'S Proclamation will demonstrate:

"For political reasons, the claims to jurisdiction by New York might have been deferred, as well as the strict inquisition on the civil power to exercise jurisdiction in their respective functions as far as the Eastern banks of Connecticut River,—

* * * To the end, therefore, that the grantees now settled and settling on those lands under His late and present Majesty's charters may not be intimidated, or any way hindered or obstructed in the improvement of the lands so granted, as well as to ascertain the right and maintain the jurisdiction of His Majesty's government of New Hampshire as far Westward as to include the grants made:

I have thought fit, by and with the advice of His Majesty's Council to issue this Proclamation, hereby encouraging the several grantees, claiming under this Government, to be industrious in clearing and cultivating their lands agreeably to their respective grants.

And I do hereby require and command all civil officers within the Province, of what quality soever, as well those that are not, as those that are inhabitants on the said lands, to continue and be diligent in exercising jurisdiction in their respective offices, as far Westward as grants of land have been made by this Government; and to deal with any person or persons that may presume to interrupt the inhabitants or settlers on said lands as to law and justice do appertain; the pretended right of jurisdiction mentioned in the aforesaid Proclamation notwithstanding.

Given at the Council Chamber in Portsmouth, the 13th day of March, 1764, and in the fourth year of His Majesty's reign.

B. WENTWORTH.

The controversy, thus begun by gubernatorial proclamation, was

continued with much bitterness for a period of fifteen years. In 1764, the matter in question was decided by Imperial decree in favor of New York, and the claim of that government to jurisdiction extending to the East as far as Connecticut river, was confirmed. "His Majesty was pleased, with the advice of his Privy Council, to approve of what is therein proposed, and doth accordingly hereby order and declare the Western banks of the Connecticut river, from where it enters the Province of the Massachusetts Bay, as far North as the 45th degree of North latitude, *to be* the boundary line between the said two Provinces of New Hampshire and New York. Wherefore, the respective Governors and Commanders of his Majesty's said Provinces of New Hampshire and New York, for the time being, and all others whom it may concern, are to take notice of His Majesty's pleasure and govern themselves accordingly."

To this royal decree, different and widely variant construction was given. The settlers on the New Hampshire Grants considered that its fair operation was to place them under the *future* jurisdiction of New York. The government of that Colony, on the contrary, contended that the order had a retroactive and retrospective bearing, and determined not only what *should be*, but what *always had been*, the geographic limits of the Colony of New York. The settlers on the New Hampshire Grants inferred that the royal decree could in no wise affect their land-titles, or any past contracts. The New York authorities, taking a different view of the royal decision, insisted that the grants made by the government of New Hampshire were unauthorized by the Crown, and were, of course, illegal and consequently void. If the same interpretation had been given to the royal decree by the authorities of both Colonies, all historians unite in saying there would have arisen no controversy like that which was carried on with great acrimony from the year 1763 to 1775.

The order of the 20th July 1764, created disaffection among the settlers on the New Hampshire Grants, of whom SETH WARNER was an acknowledged leader. At the outset, the order was regarded as extending the jurisdiction of New York over their territory, commencing with the date of said decree; and in this they were willing to acquiesce. But not apprehensive that the titles

to their farms could be at all affected, they were astonished when they were summoned to re-purchase or abandon the lands they had received by grant from the Crown. The Governor of New Hampshire interposed his remonstrance, complaining of a change of jurisdiction. As the remonstrance proved ineffectual, like a shrewd politician, who knows instinctively which is the stronger side of any question, and who has, like Orator Puff, two tones to his voice, he complacently "recommended to the proprietors and settlers, due obedience to the authority and laws of New York."

Soon after the issuing of this mild recommendation, the Government of New York proceeded to divide the territory into Counties, and to establish Courts and County seats. The Grants were organized into four Counties—Charlotte and Gloucester on the North, and Albany and Cumberland on the South; and this organization was continued until the Declaration of Independence on the part of Vermont in, 1777. Those settlers who peremptorily refused to surrender their charters, pursuant to the claims of the New York authorities, were sued before these Courts. As the judgments which were rendered were simply the echoes of the gubernatorial voice, and as the plaintiff was certain to be successful in his suit, no alternative was presented to the defendants, but either to re-purchase the farms once paid for, or to surrender the earnings and betterments of their industry to new claimants under New York titles.

All efforts to execute judgments obtained in these Courts, where it was decided that duly authenticated copies of royal orders to the Governor of New Hampshire, and of the grants made pursuant to those orders, should not be read in evidence, were commonly useless. Generally they were unavailing, and oftentimes were attended with mirth-compelling and disastrous consequences. For the purpose of rendering such resistance effectual, various associations were formed, and at a Convention holden in Bennington, an agent was appointed to go to the Court of St. James, and, representing the onerous grievances of the settlers, pray for a confirmation of the grants made by the Governor of New Hampshire. The result of his mission was an order from His Majesty, strictly charging, requiring and commanding "the Governor or

Commander in Chief of His Majesty's Province of New York, for the time being, upon pain of His Majesty's highest displeasure, not to presume to make any grant whatsoever of any part of the lands described in the Report of the Board of Trade, until His Majesty's further pleasure concerning the same shall be known."

This prohibition was explicit enough. The Governor of New York continued, however, to make further grants. Writs of ejectment were prayed out by lawyers, whose bread depended upon "fat contentions and flowing fees," and inasmuch as no *legal* defence was tolerated, the settlers were driven to the *last* resort, as the only remaining alternative.

"Hitherto," say the Vermont State papers, "New York had founded her claim to the lands in question, on the grant to the Duke of York. Not choosing, however, longer to rely on so precarious a tenure, application was made to the Crown for a confirmation of the claim. This application was supported by a petition, *purporting* to be signed by a great number of the settlers on the New Hampshire grants, representing that it would be for their advantage to be annexed to the Colony of New York, and praying that the Western bank of Connecticut river might be established as the Eastern boundary of that Province."

In an article in the Connecticut Courant, published in April, 1772, there is a frank, and perhaps just, commentary on the strategy employed by the then Albany Regency, to acquire jurisdiction over the New Hampshire Grants. I transcribe the gist of said publication, as throwing some light on the subject of my present discourse:—

* * * * "The fallacious policy, made use of in New York to obtain the jurisdiction, has given great umbrage to the said inhabitants. The Yorkers sent spies through the said country, and by one pretence or other, found out the names of the said inhabitants, and then, unknown to them, affixed their several names to a petition requesting His Majesty and Council to confirm and annex them to the Province of New York. This legerdemain was undoubtedly the cause of their extending their jurisdiction to the banks of Connecticut river. If so, it is probable, as the evidence of this fact was sent to His Majesty and Council last Summer, it will be the cause why His Majesty and Council should alter the jurisdiction to New Hampshire.

"Again; be this as it will, the unreasonable and inhumane use the Yorkers have made of the powers of jurisdiction since they obtained it, has given more trouble, disquietude and uneasiness than their first detestable way of obtaining it. Certain designing men in New York, having purchased patents from that Province and lapped them on patents antecedently granted under the great seal of the Province of New Hampshire—which antecedent patents were settled by the New Hampshire grantees, prior to the dates of said patents under the great seal of the Province of New York, notwithstanding the New York grantees have brought sundry writs of ejectment against the New Hampshire grantees and actual settlers, and having

obtained judgment against them, proceeded further and took out writs of possession as they called them, and by order of Law actually dispossessed sundry of said inhabitants, grantees as aforesaid, of their houses and farms, leaving them to suffer the inclemency of the weather, and deprived of all the necessaries of life. Their new masters having taken and monopolized their earthly all to themselves, these indigent families having in the first place expended their several fortunes in bringing their said farms out of a wilderness state into that of fruitful fields, gardens and orchards. The whole country, consisting of more than fifteen hundred families, was greatly alarmed at the event which had begun to take place, was in great consternation—each individual reading their own intolerable destruction from that which had already begun. Still the writs of ejectment coming thick and faster—women sobbing and lamenting, children crying, and men pierced to the heart with sorrow and indignation at the approaching tyranny of New York. Meanwhile, a high-spirited man took a small ox-goad and coolly belabored one of the officers, who had gloried much in being the instrument of the New York oppression.—Zeal taking fire from this example, in the breasts of great numbers of the people, the officers perceived that it was not safe for them to serve writs of ejectment upon the people, but more in special they were in hazard if they presumed to dispossess the people of their houses and lands. Though in any matters of debt by note, promise or book, or in fine for any sort of exercise of authority, except depriving people of their country, or had a direct and apparent tendency thereto, officers did, and at this time do officiate in office as unmolested, nay, actually assisted when they desire it, as in any plantation in English America.

Strange! G— Tryon should tax the said inhabitants of riotousness, faction and disobedience, in every instance, "that they oppose every legal process," &c., as if his soul doted on such a sort of demeanor and obedience from said inhabitants, as would give him and his favorites peaceable possession and enjoyment of their whole country, which they have, by their money and labor, made vastly valuable—having metamorphosed it from the condition of a howling wilderness into villages and fruitful plantations. This is flagrantly that sort of loyalty and this sort of jurisdiction aimed at by Gov. Tryon and his associates.

Providence has hitherto mightily protected Bennington and the Northern settlements from the policy and ravages of New York, when the invisible posse made their appearance at that town last Summer. God overruled it for good * * * for the Sheriff's party, when they saw the industry of the people, and were informed how they firstly purchased the lands and paid their money for the same to one of His Majesty's Governors, the generality of the Sheriff's party declared that they would rather be accessory to oppose the Sheriff, than to dispossess the people.—Furthermore, there was a strong party of volunteers, well armed, from the Bay Province, and though they were willing to defend their settlers from the jaws of the Yorkers even by force of arms, yet they were much more rejoiced to see so generous a spirit in the Sheriff's party, so that that fray seemed to open the eyes of great numbers of the people, both in the Province of New York and the Bay Province, and convince them of the Justice of the cause in which the settlers were engaged.

There is one more sort of cunning made use of by New York, which is to make such a use of their jurisdiction as to make presentment of every sensible, bold-spirited man who adheres closely to the maintaining the property of their lands; and there have been many occasions to either oppose the Sheriff in dispossessing the people, or opposing the officers in their attempt to take such of the people as they are pleased to enroll rioters. By these means, they enroll most of the country. Self-preservation makes it necessary that the said inhabitants hold together and defend themselves against this execrable cunning of New York, for otherwise the Yorkers would so punish and bring to poverty every patriotic, generous and valiant man on their lands, that the residue of the faint-hearted and ignorant people would be by them enslaved into such measures as tyranny and avarice should dictate. It is altogether impossible for the people who have settled their lands to demean themselves as good and faithful subjects of that Province, in their sense of it, so long as they refuse to yield the property of their lands to the intrigues of New York. I am fully of the opinion that the brave people will hold out to the end as they have done, and so for the future they will maintain their possessions."

*See a Report of a Committee of Council about laws on the West side of Connecticut river, in the Appendix.

SETH WARNER was no idle spectator during these exciting times. Whether he would yield up his property to a set of land-sharks, or make forcible resistance, was a question upon which he took but little time to ponder. He advocated *resistance*: and warmly approved of the proceedings of that Convention which assembled at Bennington and—

“*Resolved*, To support their rights and property under the New Hampshire Grants against the usurpation and unjust claims of the Governor and Council of New York *by force*, as law and justice were denied them.”

This resolution was zealously supported; spirited and determined resistance to the authority of New York ensued. Several of the inhabitants of the grants were indicted as rioters. “A military association,” says a cotemporaneous writer, “was formed, of which ETHAN ALLEN was appointed Colonel Commandant, and SETH WARNER, REMEMBER BAKER, ROBERT COCHRAN, GIDEON WARNER, and some others, were appointed Captains. Committees of Safety were, likewise, appointed in several towns West of the Green Mountains.”

The Sheriff of the County of Albany, to whom was entrusted the duty of enforcing writs of possession, enjoyed an office which could hardly be denominated a sinecure. Whenever he appeared upon the grants with his *posse comitatus*—often numbering 750 men, all told—he was sure of being met by a party equally numerous, and determined to frustrate his object. Of such parties SETH WARNER and ETHAN ALLEN were the active leaders and Captains; and a Proclamation was accordingly issued by the Governor of New York, offering “a reward of £150 for the apprehension of ETHAN ALLEN, and £50 each for WARNER and five others.” Determined to return the compliment promptly, ALLEN and WARNER, and the other outlaws, issued a counter Proclamation “offering *five* pounds for the apprehension and delivery to any officer of the Green Mountain Boys, of the Attorney General of New York.”

It will be borne in mind that the resolutions, adopted by the Conventions of the people, were regarded as the law of the New Hampshire Grants. Every infraction of the law thus made, was followed by a punishment of great severity. That most frequently inflicted, was the application to the naked back of the “Beech Seal,” and perpetual banishment from the Grants. The sentence

of BEN HOUGH will serve my purpose as a sample of the punishment then in vogue. History tells us that BEN was a violent "Yorker," and resided near Clarendon. Receiving, by dint of importunity, an appointment of Justice of the Peace within and for the County of Charlotte, from the government of New York, he was not content with the simple honor of the appointment. He seemed to be anxious to distinguish himself in the new position to which the partiality of the New York authorities had promoted him. And, certainly, he gained distinction ;—but such distinction as might well be dispensed with, by all those who prefer the honors of a private station, to the unenviable notoriety of cutting a most ludicrous figure on the page of History.

After obtaining his commission, he promptly proceeded to execute the duties of his newly acquired office. He received, but disregarded, the warning to desist which was served upon him by the "Committee of Safety." Being found incorrigible, he was arrested and carried before a Committee consisting of ETHAN ALLEN, SETH WARNER, and others who were proclaimed as outlaws. "The decree of the Convention," says Thompson's History, "and the charges of the prisoner being read in his presence, he acknowledged that he had been active in promoting the passage of a certain law, and in the discharge of his duty as a Magistrate ; but pleaded the jurisdiction of New York over the Grant, in justification of his conduct."

But, sad to relate, although BEN's dilatory plea was, under ordinary circumstances, worthy of consideration, this Committee disregarded it and pronounced upon him the following sentence, viz :—

"That the prisoner be taken from the bar of this Committee of Safety, and be tied to a tree, and then on his naked back, receive two hundred stripes ; his back being dressed, he should depart out of the district, and on return without special leave of the Convention, to suffer death."

This sentence was carried into execution in the presence of a large concourse of people : and at his request the following certificate was furnished for his future reference :—

"SUNDERLAND, 30th January, 1775.

This may certify the inhabitants of the New Hampshire Grants, that BENJAMIN HOUGH hath this day received a full punishment for his crimes committed heretofore against this country ; and our inhabitants are ordered to give him, the said HOUGH, a free and unmolested passport toward the city of New York, or to the Westward of our Grants, he behaving himself as becometh.

Given under our hands the day and date aforesaid.

ETHAN ALLEN,
SETH WARNER."

When this paper was handed to BEN, ALLEN observed that the certificate, *together with the receipt on his back*, would, no doubt, be admitted as legal evidence before the Supreme Court and the Governor and Council of New York, although, in several instances, to his knowledge, the King's warrant to Gov. WENTWORTH and His Excellency's sign manual, with the Great Seal of the Province of New Hampshire, would not.*

Living, as their descendants now do, in the enjoyment of just and equal laws, and in times when such penalties are never inflicted, it is no slight task to form a proper estimate of the measures now under review. Those who regard them as severe must bear in mind that, aside from the alternative of surrendering their farms, which their industry had made to blossom as the rose, or a determined resistance by force, the settlers on the New Hampshire Grants were made to feel the rigor of laws more tyrannical and sanguinary than can readily be found in any other code than that of Draco.

I now quote from an extraordinary law enacted on the 9th of March, 1774, by the General Assembly of New York :

"SECTION 5. And be it further enacted by the authority aforesaid, that, if any person or persons, within the said counties or either of them, not being lawfully authorized a judge, justice or magistrate, shall assume judicial power, or shall try, fine, sentence or condemn any person who shall either be absent or shall unlawfully or forcibly be seized, taken, or brought before him or them for trial or punishment ; or if any person or persons shall aid or assist in such illegal proceedings, or shall enforce, execute or carry the same into effect ; or if any person or persons shall, unlawfully seize, detain or confine, or assault and beat any magistrate or civil officer, for, or in respect of any act or proceeding in the due exercise of his function, or in order to compel him to resign, remove or surcease his commission or authority, or to terrify, hinder, or prevent him from performing and discharging the duties thereof ; * * * * * that then, each of the said offenders respectively be adjudged felony without benefit of clergy ; and the offenders therein shall be adjudged felons, *and shall suffer death as in cases of felony without benefit of clergy.*"

It was made the duty of the Governor to publish the names of such persons in the *New York Gazette & Weekly Mercury*, as

*See Appendix.

should be indicted for any capital offence, with an order in Council commanding such offenders to surrender themselves within seventy days after the publication thereof, *under the penalty of being convicted of felony and to suffer death without benefit of clergy!!*

With the passage of such a law as this, every prospect of reconciliation and submission to the claims of New York evaporated. The New Hampshire grantees, suspecting the action of the New York authorities to originate in the avarice of a set of speculators who coveted their lands—knowing that the people of New York felt no disposition to aid in enforcing such claims—satisfied that the popular sentiment was highly favorable to the rights of the settlers—and being aware, from past experience, that the militia of the Colony could never be induced to contend against them—regarded with contempt every threat or legal enactment intended to inspire terror. “Indeed,” say the Vermont State Papers, “the idea of *submission* seems never for a moment to have occupied the attention of the handful of brave men against whom these measures were directed. Educated in the school of adversity, and inured to hardship and danger, they met and sustained the shock with a firm, unbroken spirit.”

“Let it not be said that the infliction of this barbarous punishment proves that the people of the Grants were less civilized than the people of other parts of New England; for long afterwards this relic of barbarism was found in the criminal code of all the States; but a more advanced state of civilization has since broken up the habit by which it had been continued through generations of civilized man, and it has been exploded never again to find a place in the code of any of the American States.”*

Aside from the reasons heretofore given for retaliation on the part of the Green Mountain Boys, it need not escape remembrance that as necessity drove them to resistance, so sound policy would naturally dictate that such resistance should be of a character to inspire a full and firm belief that it would be effectual.

The New Hampshire grantees were by no means so engrossed with their own troubles as to be indifferent to the policy pursued by the Mother Country towards her Colonies in America. As the

*Memoir of Col. SETH WARNER, by the Hon. DANIEL CHIPMAN.

settlers were chiefly emigrants from Connecticut and Massachusetts, they sympathized with the feeling of discontent which pervaded those Colonies. Those residing on Connecticut River, who had surrendered their original charters and taken out new grants under the broad seal of New York, and had submitted to the jurisdiction of that Colony, were comparatively unconcerned spectators of that bitter controversy in which the grantees on the West side of the Mountains were interested. The massacre, as it was called, of the 13th of March, at Westminster Court House, however, exasperated them and raised a tumult of opposition to New York. At a meeting of Committees appointed by a large body of inhabitants on the East side of the range of Green Mountains, held at Westminster on the 11th day of April, 1775, it was

“ *Voted*, That it is the duty of said inhabitants, as predicated on the eternal and immutable law of self-preservation, to wholly renounce and resist the administration of the government of New York, till such time as the lives and property of those inhabitants may be secured by it ; or till such time as they can have opportunity to lay their grievances before his Most Gracious Majesty in Council, together with a proper remonstrance against the unjustifiable conduct of that government ; with an humble petition to be taken out of so oppressive a jurisdiction, and, either annexed to some other government, or erected and incorporated into a new one, as may appear best to the said inhabitants, to the Royal wisdom and clemency, and till such time as his Majesty shall settle this controversy.”

It has been my purpose to present from the historical memoranda, letters and other valuable manuscripts which I have been permitted to examine, such facts and data as will give a correct view of this most interesting controversy. A complete narrative of that period of history remains a desideratum, which will possibly be hereafter supplied by some authentic writer, who is willing to labor diligently and master many of those secret manœuvres, which now greatly puzzle those who are most familiar with the various phases of that important period.

I have designed—not, I fear, without being very tedious—to describe the feeling which swayed the entire population of Vermont, before the attention of its inhabitants was engrossed with another more important subject. What would have been the result of that controversy, if the minds of the grantees had not been directed from its consideration, it is not easily conjectured. The controversy with New York was arrested by the commencement of the REVOLUTIONARY WAR.

On the 19th day of April, A. D. 1775, there was a serious conflict between Old England and her American Colonies. The at-

tention of New Yorkers and Green Mountain Boys was diverted from their land difficulties, their beech-seal certificates, and their midnight riots, to a higher and more important controversy, involving the independence of the whole American People!—Soft words had been followed by hard blows, and England had degenerated so much from the proud spirit which ennobled the breasts of HAMPDEN and MILTON, as to wage a bloody war with Liberty—that principle of power, of heroism, of hope, without which not even the self-styled “Mistress of the World” could be great or good. It is not amiss to say, in this connection, that Poetry can dwell in no soul, Eloquence can escape from no lips, Patriotism can dictate no worthy deed, and Heroic Goodness can never bud, bloom and blossom, without the mild light, the genial warmth and ruddy glow, of Liberty. He, whose chariots are the clouds, who rideth upon the wings of the wind, whose ministers are a flaming fire—who meteth out the earth as it were a span, who holds the world in the hollow of His hand, hath so written His unalterable decree.

“’Tis *Liberty* alone that gives the flower
Of fleeting life its lustre and perfume;
And we are weeds without it!”

On that memorable day, was blown a trumpet-blast which heralded the advent of the North American Union. On that day was begun, in the words of the “Sage of Quincy,” now sleeping with his fathers, “the struggle for chartered rights—for the cause of ALGERNON SIDNEY and JOHN HAMPDEN—for trial by jury—the Habeas Corpus and Magna Charta.”

At this period, prominent and, in fact, *foremost* among the Green Mountain Boys, stood SETH WARNER. I am aware, that his exploits have not been duly commemorated. Clio, the Muse of glory and of history, whose attributes are a wreath of laurel upon her head, a trumpet in her right hand and a roll of papyrus in her left, has been too much occupied in dancing and singing with Apollo and his little group in more genial climates, to pay a proper tribute to his memory.

“No bard embalms and sanctifies *his* song—
And History, so warm on other themes,
Is cold on this.”

Up to the time of this present speaking, nothing, save a few obitu-

ary notices of him, and a short biographical sketch in the *Rural Magazine*, printed in 1795, has been published ; and so the light of his fame has been suffered to be hid.

It is to be hoped that the venerable gentleman—the Hon. DANIEL CHIPMAN—whose learned leisure is spent in the solitude of the mountains of Ripton, and who is devoting the residue of his chequered life to rescuing the memory of departed patriots from impending oblivion, will be successful in his noble endeavor to attract public attention to the merits of this modest and energetic lover of his country. If he succeed in securing from his countrymen justice, on his behalf, his literary enterprize must command, as it will deserve, the gratitude of every admirer of heroism and the thanks of every lover of letters.*

No man was more ardent in his love of freedom and good order, more unyielding in his hostility to tyranny in all of its manifestations, and more frank and bold in the expression of his political opinions, than SETH WARNER. But, unlike his colleague, ETHAN ALLEN, he had no talent nor ambition as a writer of political pamphlets. He possessed a vigorous intellect, and was gifted with an uncommon share of self-possession—qualities which enabled him to gain and retain the confidence of all persons within the pale of his influence.

By way of illustrating the character of those times, and the personal popularity of SETH WARNER, I am tempted, even at the risk of unpardonable prolixity, to quote an account of the recruiting of a Regiment on the New Hampshire Grants, and the appointment of the field officers, as found in the first Volume of “American Biography,” by JARED SPARKS, page 288 :

“The troops from Connecticut, under Colonel HINMAN, at length arrived at Ticonderoga, and Colonel ALLEN’s command ceased. His men chiefly returned home, their term of service having expired. He and SETH WARNER set off on a journey to the Continental Congress, with a design of procuring pay for the soldiers who had served under them, and of soliciting authority to raise a new regiment on the New Hampshire Grants. In both these objects, they were successful. By an order of Congress, they were

*See Appendix.

introduced on the floor of the House, and they communicated verbally to the members such information as was desired. Congress voted to allow the men, who had been employed in taking and garrisoning Ticonderoga and Crown Point, the same pay as was received by officers and privates in the American army; and, also recommended to the Provincial Congress of New York, that, after consulting with General SCHUYLER, 'they should employ in the army to be raised for the defence of America, those called Green Mountain Boys, under such officers as the said Green Mountain Boys should choose.' This matter was referred to the Government of New York, that no controversy might arise about jurisdiction, at a time when affairs of vastly greater moment demanded the attention of all parties. ALLEN and WARNER repaired without delay to the New York Congress, presented themselves at the door of the Hall and requested an audience,—the resolve of the Continental Congress having already been received and discussed.

"An embarrassing difficulty now arose among the members, which caused much warmth of debate. The persons who asked admittance were outlaws, by an existing act of the Legislature of New York, and, although the Provincial Congress was a distinct body from the old assembly, organized in opposition to it, and holding its recent principles and doings in detestation, yet some members had scruples on the subject of disregarding, in so palpable a manner, the laws of the land, as to join in public conference with men who had been proclaimed by the highest authority in the Colony to be rioters and felons. There was also another party, whose feelings and interest were enlisted on the side of their scruples, who had taken an active part in the contest, and whose antipathies were too deeply rooted to be at once eradicated. On the other hand, the ardent friends of liberty, who regarded the great cause at stake as paramount to every thing else, and who were willing to show their disrespect for the old assembly, argued not only the injustice but tyranny of the act in question, and represented, in strong colors, the extreme impolicy of permitting ancient feuds to mar the harmony and obstruct the concert of action, so necessary for attaining the grand object of the wishes and efforts of every member present. In the midst of the debate, Captain SEARS mov-

ed that ETHAN ALLEN should be admitted to the floor of the House. The motion was seconded by MELANCTHON SMITH, and was carried by a majority of two to one. A similar motion prevailed in regard to SETH WARNER. When these gentlemen had addressed the House they withdrew, and it was resolved that a regiment of Green Mountain Boys should be raised, not exceeding five hundred men, and to consist of seven companies.

"They were to choose their own officers, except the field officers, who were to be appointed by the Congress of New York; but it was requested that the people would nominate such persons as they approved. A Lieutenant Colonel was to be the highest officer. The execution of the resolve was referred to General SCHUYLER, who immediately gave notice to the inhabitants of the Grants, and ordered them to proceed in organizing the regiment.

"Meanwhile ALLEN and WARNER had finished their mission and returned to their friends. The Committees of several townships assembled at Dorset to choose officers for the new regiment. *The choice fell on SETH WARNER for Lieutenant Colonel, and on SAMUEL SAFFORD for Major.* This nomination was confirmed by the New York Congress."

"ALLEN," says CHIPMAN'S "Memoir of Seth Warner," now printed but not yet published,* "was sometimes rash and imprudent. WARNER, on the other hand, never wrote anything for the public eye. He was modest and unassuming. He appeared to be satisfied with being useful, as he manifested no solicitude that his services should be known or appreciated. He was always cool and deliberate, and in his sound judgment, as well as in his energy, resolution and firmness, all classes had the most unlimited confidence.

"From the foregoing brief sketch of the very different characters of ALLEN and WARNER, it is evident that they were far more efficient and more useful in defending the New Hampshire Grants, than they would have been, had they both been ALLENS or both WARNERS, and it would not be extravagant to say, that had either been wanting, the independence of Vermont might not have been

*CHIPMAN'S Memoir of Seth Warner, pp. 35-6.

achieved. But in selecting a person to command a regiment, the men of that day gave the preference to WARNER. Accordingly, the Convention assembled at Dorset to nominate officers for a regiment of Green Mountain Boys, nominated WARNER for Lieutenant Colonel to command the regiment, by a vote of 41 to 5. And as ALLEN was a candidate for the office, as appears by his letter to Governor TRUMBULL written shortly after the officers were nominated, in which he says, that he was overlooked because the old men were reluctant to go to war, the vote must be considered as a fair expression of the public sentiment in relation to the qualifications of the two men for the office. This is confirmed by the few cotemporaries of ALLEN and WARNER who still survive, and by the traditionary accounts of the men of that day."

Without pausing to comment upon the fact that sufficient attention has not been paid to the eminent services of Col. WARNER, it may be proper to say that when the story of this period in the History of Vermont is written in detail, his exploits will not be forgotten.

Like many of the settlers upon the Grants, Col. WARNER was a man of an iron frame. He stood six feet three inches and three fourths in his stockings, and was possessed of rare physical strength and agility. Corresponding with such a body, his mind was active and resolute, and had been wrought to the exercise of its highest energies in a struggle involving everything dear to the heart of such a man. Having arrived at a conclusion, he was wanting neither in the courage nor the ability to carry his decision into prompt execution. He could endure *any* thing with more composure than *oppression*.

Entertaining such sentiments, which were never disguised, it excites in our minds no wonder that the New York authorities should have proscribed him as an outlaw. Such proscription, however, seemed to draw around the determined champion of freedom warm and devoted friends who clung to him more firmly as he was the more bitterly opposed. Among his friends, there obtained but one voice and one mind. Heterogeneous as that little band was in its composition, it could neither be intimidated nor flattered, neither be bought nor subdued.

There was burning in their bosoms one clear and never-dying

flame of freedom. A palpable principle of right being outraged, their property, by an unjustifiable judicial interpretation and decision, being jeopardized, they were startled into determined resistance. Under the guidance of SETH WARNER and his worthy colleague ETHAN ALLEN, they found no time, as they had no disposition, to whine or languish. No torpid numbness or chilling indifference crept over their faculties or clouded their minds. When any infringement upon their personal liberty or private property was attempted, a feeling of opposition sprang up in their breasts, and, instantaneously, like the passage of the electric fluid, a sympathetic determination to defend their rights stimulated them to action.

Gentlemen : These men were our ancestors. Their noble conduct, their patriotism, gained for us the rights and privileges of an independent sovereignty in this Republic, which we are now enjoying. And what, let me ask, in view of these circumstances, should *now* constitute this commonwealth ?

“What constitutes a State ?
 Not high-raised battlements or labored mounds,
 Thick walls or moated gates,
 Not cities proud with spires and turrets crowned,
 Not bays and broad armed ports,
 Where laughing at the storm, rich navies ride ;
 But men—true-hearted men ;
 Men who their rights do know,
 And knowing dare maintain,
 These, these constitute a State.”

Gladly would I dwell on the military exploits of Col. WARNER—of the capture of Old Ticonderoga and Crown Point—of his bravery and daring in the Province of Canada—of his courage at the siege of Quebec—of his glorious services in the second battle of Bennington, but time and the proprieties of this occasion will not now permit. I have, however, in my custody a petition to Congress on behalf of the gallant Colonel, which, presenting as it does, a brief and correct summary of his services, ought to be preserved ; for it is a noble tribute to his memory from the pens and hearts of men who knew and appreciated his excellence as a *Soldier, Patriot and Man*.

“ BENNINGTON, July 7th, 1786.

To His Excellency the President of Congress :—

SIR :—We beg leave to give Congress a brief account of the services and sufferings of the late Col. SETH WARNER, particularly his sufferings which ap-

pear to have been immediately in consequence of his exposing himself in the service of his country in the late War, in which he was of the first that stepped forth in this quarter.

At the first reduction of Ticonderoga, St. Johns, &c., in A. D. 1775, he performed an active part. At Longueuil, in Canada, under the command of Gen. MONTGOMERY, in an action in which he commanded, his bravery and prudence were conspicuous and much applauded—which Gen. MONTGOMERY was pleased to testify by sundry letters. He was in the siege before Quebec and, in the course of the fatigues of this campaign and retreat, he received the first sensible injury to his health. In 1777, General SCHUYLER was pleased to order him on a particular command into Jessop's Patent, where, in the prosecution of the services of his command, he exposed himself so unreservedly as to take an effectual bane to his after health. Before this, he was of a most firm constitution, but ever after declined and became a prey of an inveterate and extraordinary disease which began now and fell into his feet and legs, and which continued to rage, baffling all attempts for a cure until it put an end to his life, December 26, A. D. 1784.

It is probable, had Col. WARNER at this time retired from the service, he might, in some good degree, have recovered his health; but it being the trying time of American affairs in this quarter, there was no room in a mind like his to attend to such a proposition and accordingly he persevered until his important and memorable actions at Hubbardton and Bennington.

After this, he began sensibly to decline, so that there remained but little prospect of his future usefulness. He, however, grappled with his disorder and continued in the service until receiving a wound from an ambush of Indians near Fort George, in September, A. D. 1780 (at which time the only two of his officers that were with him fell dead by his side,) he was obliged to retire for the last time a little before his Regiment was reduced. After this, his case became truly effecting, and himself a spectacle of human woes until death closed the scene.

With this account, we beg leave to recommend to the particular favor of Congress the Widow and fatherless children of the deceased, whose circumstances, as we are informed, are quite necessitous.

Sir, Your Excellency's very humble servants,
 THOMAS CHITTENDEN, SAMUEL SAFFORD,
 THOMAS TOLMAN, ISAAC TICHENOR,
 ETHAN ALLEN, STEPHEN R. BRADLEY,
 PAUL SPOONER, GIDEON BROWNSON,
 TIMOTHY BROWNSON, HEMAN SWIFT,
 SAMUEL CANFIELD."

And now, after the silver cord was loosed and the golden bowl was broken, in the little parish of Roxbury, in the town of Woodbury, near the banks of a stream which pays tribute to the river Housatonic, lie the remains of Col. SETH WARNER. He has plucked his last flower; he has bagged his last game; he has flogged his last Sheriff; he has fought his last battle!

"How are the Mighty fallen and the weapons of War perished!" This expressive text from the II. Samuel, ch. 2, v. 27, was appropriately discussed in a funeral discourse by the Rev. THOMAS CANFIELD, when his ashes were consigned to earth with all the honors of War, in a grave remote from the Grants he loved so well

and for whose sake he had yielded up his life in the bloom of manhood.

On a white marble memorial-stone in Roxbury, over which the moss has been suffered to grow, may now be deciphered with much pains-taking, the following inscription:—

IN MEMORY OF
COL. SETH WARNER, ESQUIRE,
WHO DEPARTED THIS LIFE DECEMBER 26, A. D. 1784,
IN THE 42D YEAR OF HIS AGE.

“Triumphant leader at our armies’ head,
“Whose martial glory struck a panic dread;
“Thy warlike deeds engraven on this stone,
“Tell future ages what a hero’s done.
“Full sixteen battles he did fight,
“For to procure his country’s right;
“Oh! this brave hero, he did fall
“By death, who ever conquers all.

“WHEN THIS YOU SEE,
“REMEMBER ME.”

Biographical sketches and recitals from the lips of cotemporaries, give assurance that the visit of death, of old named “King of Terrors,” was caused by too constant toil and exposure on behalf of his country.* But the distressing maladies of his death-bed he bore with the fortitude of a soldier. There was solace to him, pending the agony of suffering, in the reflection that his labors were crowned with success. A source of grief, which obtruded itself upon his mind, was the consciousness that his widow and three children would be left destitute of the means of livelihood. The lands, which he once owned, had, while he was engaged in active service on behalf of his country, been sold for taxes; and the gore in Essex County, granted to his heirs by the General Assembly of Vermont in 1787, was found to be of little or no value, and remains unsettled to the present time. Col. WARNER was so much engrossed with the patriotic passion that he omitted saving his own land while he could save his country.

Regret, however, was unavailing then. Disease in an aggravated form, had fastened its fangs upon his system, and death had put his gripe upon his body. He was not permitted to die in his senses. Prior to his decease, he was the victim of a raging delirium; and, in his wild imagining, fancied himself at the head

*See Appendix.

of his regiment of Rangers, and, on his dying couch, restrained by a constant guard of able-bodied men, he would fight his battles over again. The preternatural strength, with which he was endowed, decreased, at last, with the progress of his insidious malady, and the skillful botanist, whose prescriptions had prolonged the lives of others, could not restore his own reason or save his own life. The practised huntsman, the sinews of whose gigantic frame were hardened in the hunting grounds of Vermont, and who had never feared the face of any man, paled and trembled before the grim visage of that huntsman whose name is Death.—His earthly doom was finally sealed! His earthly sands had run out! He obeyed the mandate to join the majority—*abiit ad plures*—and was gathered to his fathers in the prime of life—"ere his eye was dim or his natural force abated." The gold was refined and the crucible was broken! The toil-worn body was lain in the "narrow house appointed for all living" that the soul might escape into life. "The mortal cerements have been burst and the winged child is born into the true life—the life of eternity." "*After* life's fitful fever, he sleeps well."

"How sleep the brave who sink to rest,
By all their Country's wishes blest!
When Spring, with dewy fingers cold,
Returns to deck their hallowed mould,
She there shall dress a sweeter sod,
Than fancy's feet have ever trod.

By fairy hands, their knell is rung,
By forms unseen their dirge is sung,
Their Honor comes, a pilgrim gray,
To bless the turf that wraps their clay,
And Freedom shall awhile repair,
To dwell a weeping hermit there."

Gentlemen of the General Assembly :

The time already occupied ought to warn me that I am in danger of over-tasking your patience. A few general observations, naturally suggested by the subject-matter of this address, demand brief notice, and then my duty to those, who have honored me by their invitation and with their patient attention, is fulfilled.

The State of Vermont, unlike the Old Thirteen, had no previous colonial organization. No civil compact bound those inhabitants together who emigrated hither from the Colonies. But

the ties of sympathy, strengthened by the menace and force of tyranny, prompted them to unite together for the safety and promotion of the common welfare. For this reason, as has been very properly contended, "every record and document and pamphlet relative to our early history is invested with peculiar importance as showing the manner of development from a state of nature to a well-organized and efficient government."

A twelve month since, M. VATTEMARE, the distinguished founder of the system of International Literary and Scientific Exchanges, visited the capitol of Vermont. He there addressed the members of the General Assembly and proved, conclusively, that his project was eminently feasible, and would greatly tend to "promote the diffusion of knowledge and induce nations to be more firmly united in the bond of mutual good offices." At that time, the melancholy truth became widely known, that heretofore so little regard had been paid to the preservation of our most important documents, that not even the State Library contained a complete set of the published laws and journals of our Legislature!

Now, this must appear to every thoughtful Vermonter to be a most humiliating fact; for the life of a free government is mainly dependant upon the diffusion of intelligence. As, under our Constitution, all freemen are annually called upon to discharge responsible duties, they should be provided with such subject-matters of reflection as will prepare them for discharging those duties aright. There is no Appian path to mathematics and no royal road to political science. It is the imperative duty of *every* citizen of a free government to become familiar with the past and present history of his own country and his own State. This can not be done by intuition or miracle. He must be able to consult reliable authorities for this purpose, and must bear in constant remembrance that the ark of political safety is entrusted to the custody of every freeman. I reiterate no new truism when I say that he can best discharge his duty to his God and country who studies that he may obey the laws of both.

A very foolish error has gained currency among the people about the necessity and value of antiquarian research. An antiquary is commonly regarded as an obtrusive and tedious old fellow who visits you before breakfast and rummages over the

old papers and letters which are stored away among the cob-webs of your garret—annoys you during the day with foolish stories concerning this book or that hero about which you feel no interest, and talks until midnight about some curious investigation under the supposition that he has imparted to you some of his superfluous enthusiasm. If, prior to his departure on the morrow, he gives an extempore lecture on patriotism, and undertakes to touch the nerve that runs through the pocket, he will probably be regaled with a hint or two corresponding in spirit with the doings of that celebrated club stationed in London, known the world over as the “Pickwick Club.” That association recognized the principle of every member defraying his own travelling expenses, and could see no objection whatever to the members of the Society pursuing their inquiries, for any length of time, they pleased, upon the same terms! It also acquiesced in all proposals to pay the postage of letters and the carriage of parcels!

Now, whether the antiquary is provocative of foolish mirth or not, is to *him* of no importance. If he be a genuine antiquary, he will examine successive constitutions, laws and historical data, with a loftier purpose and to a more praise-worthy end than the winning of praise or the gratification of an idle curiosity. His mind will not be so much engrossed with the objects of the Present, but he will find sources of gratification in contemplating the history of the Past. And, thus attached to, and identified with, some comprehensive investigation, his time, his money, and his all, will be cheerfully devoted to a pursuit which, like Virtue, is apt to be its own reward. There is to him joy in seeking after wisdom: not that wisdom which enables him to become richer in gold or lands, to be powerful and influential among his fellow men, but joy in seeking wisdom for itself, wisdom to be wise.—Groping, perhaps, for awhile in the dark, he is, at last, able to trace to their origin, and through their various modifications, the institutions of the Past, and furnishes for himself and his country the safest means of comprehending the nature and tendency of existing systems.

A complete history of its own legislation, every State ought to possess. And that history should be placed within the reach of every freeman; for, as has been well remarked, “without the

possession of such a history and a practical regard to the lessons it inculcates, legislation will be, at best, but a succession of *experiments* : and, as a necessary consequence, every operation of government will be characterized with instability and want of wisdom.”*

But the objects of this Society are not confined to the collection and preservation of the legislative and historical materials of Vermont. Its purposes are far more comprehensive. Those gentlemen who formed an Association ten years ago, and were, by a legislative enactment recognized as a body corporate and politic—actuated by an enlarged and elevated idea of the pursuits to which such a society ought to be devoted,—wisely decided that one of its purposes should be the collection and preservation of materials for the *Natural History* of the State.

Man’s duties have been very properly classified, as first religious, then domestic, and then patriotic. I need not say that it is one of the patriotic duties of every Vermonter to advance, by all possible means, the grand projects which should absorb the public mind—whether, like the Geological Survey, they promote the development of the hidden wealth of the earth, or, like the present institution still in its infancy, tend to preserve from obscurity the character of our best men and rescue from oblivion the memorials or traditionary memory of important events.

One of the means to secure this end, would be the establishment of a State Cabinet of Natural History, in which all the Indian relics extant could be preserved, and perfect specimens of mineralogy, botany, ornithology and zoology, could be arranged, which would, at once, suggest to the mind of every spectator, the partiality which the Creative Power has exhibited towards the valleys of Lake Champlain and Connecticut River.

Moreover, it is all-important that such manuscripts and papers, as illustrate the civil or natural history of Vermont, should be preserved in a library easy of access at all seasons of the year. It is true that we cannot indulge in the hope of gathering such a library as the *Bibliothèque du Roi* in Paris, the Imperial Library at St. Petersburg, or the Royal Library at Copenhagen. But

*Vermont State Papers, p. 15.

still, a creditable beginning could easily be made. A library could be formed here without great delay I doubt not, and with as much ease as BENJAMIN FRANKLIN established the first American Library in Philadelphia, and which might be of as much practical utility as the more costly and extensive collections of other States.

✓ The temples of the Gods, in the time of the Ptolemies, centuries ago, were crowded with choice and costly books: and, over the alcoves, was the inscription dear to every true scholar, "the medicine of the mind," or, as otherwise translated, "the nourishment of the soul." If the mind, as is contended, be the seat of all the happiness that belongs to humanity, then under the halo of this heavenly truth will the value of books more "fully and at large appear." "There is one art," says COLERIDGE, "of which every man should be master, the art of reflection. If you are not a thinking man, to what purpose are you a man at all?" But life being short, and work indispensable, few persons have time to be taught without libraries and cabinets. We must "read, mark and learn." Libraries and Cabinets of Natural History have very properly been denominated savings-banks in which one generation deposits its earnings for the use of the next: and that adds something to the store and thus the fund rapidly increases.

From the remarks already made, it will be obvious that the "Vermont Historical and Antiquarian Society" issues cards of invitation to a wide circle of guests. All, without distinction, are asked to come and take a part in advancing the cause of that Philosophy which teaches by fact: and to aid in rescuing from oblivion every thing which relates to the past or present drama of the world. I repeat, what I have already said, that the object of this Association is "Man and Nature—whatever is or has been performed by the one or produced by the other."

A few years ago a genuine Yankee, with scarcely money enough in his pocket to purchase drawing materials and lay in a store of provisions, pushed his boat into the waters of the Mississippi—he steers slowly down the stream—gazes upon the banks on either side and sketches the "changing scenery, the virgin forest, the beetling cliffs, the spreading prairie, the Indian wigwam, the rising city, the deserted cabin, the wonders of art and nature

along its banks, till, at last, he floats out with the stream into the Gulf that receives him as Eternity swallows time."* For three years the patient *Banvard* sails up and down the Father of Rivers, and labors on his work of love. And when the work was done, and the picture completed, myriads of admiring countrymen flocked to behold it. It is not strange that European curiosity should be excited to get a glimpse of a sketch of three thousand miles condensed into three !!

I have alluded to this artistic triumph over difficulties because, to my mind, it seems to be a striking emblem of Civil and Natural History.

In the mysterious economy of Providence, it often happens that the horn of plenty drops substantial "aid and comfort" in the laps of those who scorn the rugged heights of wisdom and love the paths of ignoble ease. It is one of the note-worthy characteristics of an earnest lover of science to seek and to attain valuable knowledge under a pressure of seemingly insurmountable difficulties. And how much soever the fact may have been regretted since Solomon announced that "much study was a weariness of the flesh," and that "much knowledge increaseth sorrow," it is a melancholy truth that all persons, having the inclination and intellectual power, have not the requisite pecuniary means to float up and down the stream of the past, and to survey and map down the wonders of art and nature which abound in its midst or cluster along its banks.

But the antiquary *has* made the voyage, and on his own pages, as on a canvass, he has jotted down past events and completed his chart of the Stream of Time! That is *Civil History*!

Neither have all persons the means of collecting and arranging the numberless specimens of wealth with which the animal, vegetable and mineral kingdoms abound. But the natural historian takes the wings of the morning and flies to the uttermost parts of the sea and returns laden with the choicest products of every soil and zone. These he arranges so that the eye of the thoughtful enquirer can behold, at a glance, of what wonderful materials the planet on which we live, move and have our being, is composed. This may be called *Natural History*.

*Mr. PRIME's Address before the Library Association of Newark, N. J.

No matter what scientific bias controls the student, he is thus enabled to be the profitable spectator of a panoramic view of six thousand years ! We can sit down in the library and cabinet thus formed, and the moving canvass shall pass steadily and slowly in review before us. We shall thus familiarize ourselves with the past—become acquainted with the statesmen and heroes of antiquity and modern times—learn how this earth was constructed—keep our minds alive in the contemplation of the constantly increasing beauties and wonders of Art and Nature.

And thus—

“ *Whate’er* we see,
Whate’er we feel, shall tend to feed and nurse,
By agency direct or indirect,
Our faculties ; shall fix in calmer seats
Of moral strength and raise to loftier heights
Of divine love, our intellectual soul.”

APPENDIX.

RIPTON, Vt., October 3, 1848.

GEORGE F. HOUGHTON, Esq., St. Albans, Vt.

SIR: * * * * Some years since, I noticed that great injustice had been done to the character of SETH WARNER by certain unintentional errors in existing history; and, when in Boston in the year 1845, I called Dr. JARED SPARKS' attention to a passage in his Memoir of ETHAN ALLEN calculated to lessen the consequence of Col. WARNER with posterity. After some conversation in relation to WARNER, he requested me to write a Memoir of Col. WARNER for his "American Biography." I told Dr. SPARKS that I would make an effort to collect materials for such a work, and, if I should become unable to write, I would furnish him with the materials.

After my return from Boston, I made efforts to collect the necessary materials, but was so unsuccessful that I abandoned the idea of writing the Memoir. But in the winter of 1846-7 I fortunately found, among Mr. HENRY STEVENS' papers, such materials that I commenced writing the Memoir, and, having prepared it for the press, expected it would be published in the next volume of the American Biography, but, by the enclosed letter from Dr. SPARKS, I found that work was discontinued.

Being thus disappointed, I could not think of any mode in which the work could be published. I could not think of publishing it in a pamphlet, and it would make a volume too small to be thought of. At length, I concluded to write something to be published with it, and commenced writing under the title "The Life and Times of THOMAS CHITTENDEN, including the History of the Constitutions of Vermont." But I was soon admonished by the infirmities of age that I should not be able to collect the necessary materials and complete the work. At the same time, it fortunately occurred to me that Dr. SPARKS might permit his "Memoir of ETHAN ALLEN" to be published with the Memoir of SETH WARNER, and in June last, I wrote to Dr. SPARKS on the subject, and he generously complied with my wishes. ALLEN and WARNER are named together, as the principal leaders of the Green Mountain Boys, by the present generation, and I think they will be gratified when they find the lives of the two distinguished patriots in the same volume.

Very Respectfully,

Your ob't serv't

DANIEL CHIPMAN.

NOTE.—For the more perfect elucidation of several subjects to which allusion has been made in the foregoing address, it has been thought advisable to re-publish, in an appendix, a few papers which cannot now be found in print and for which I am chiefly indebted to the courtesy of HENRY STEVENS, Esq., of Barnet, the indefatigable President of the "Vermont Historical and Antiquarian Society."

Report of a Committee of Council about lands on the West side of Connecticut River.

PROVINCE OF NEW HAMPSHIRE.

To His Excellency JOHN WENTWORTH, Esq., Captain General, Governor and Commander in Chief in and over His Majesty's Province of New Hampshire, in New England, and Vice Admiral of the same.

IN COUNCIL AUGUST 16TH, 1771.

May it please Your Excellency—

In pursuance of a vote of Council of the 20th December, 1768, appointing a Committee to draft a just representation of the grievances of more than a thousand grantees of land granted by the late Governor of this Province, with the advice of His Majesty's Council, on the West side of Connecticut river, in consequence of a petition of JOHN WENDALL, Esq., their agent, and that the Committee exhibit a report to your Excellency in Council, we beg leave, upon faithful and mature examination, to report as follows, viz:—

First—That BENNING WENTWORTH, Esq., late Governor of this Province, by his commission, was authorized, and by instructions required, to grant (with advice of Council) the unappropriated Crown lands in said Province, under certain reservations and services to His Majesty's subjects.

Secondly—That between the years 1749 and 1764, the petitioners, with many others, solicited and obtained grants of sundry tracts of lands Westward of Connecticut River to a line twenty miles East of Hudson's River of the aforesaid Governor, BENNING WENTWORTH, Esq., with advice of Council, and under the Great Seal of this Province.

That, by His Majesty's order in Council of 20th July, 1764, the jurisdiction of the district Westward of Connecticut River, the property of the soil ungranted, equally vested in the Crown under either provincial jurisdiction as we humbly presume, was rescinded from the Province of New Hampshire and annexed to the Province of New York, unheard, unexpected, and without consciety of error or forfeiture, although extremely detrimental to the Province, and, unless relieved by His Majesty's most gracious clemency, will be entirely ruinous to the petitioners and others in like circumstances, who, with their numerous innocent, loyal and industrious families, must be reduced from hard-earned competence and quiet diligence, to all the horrors, disorders and desperations of unmerited extremest indigence; for the petitioners alledge and (for them) too plainly prove that their grants under New Hampshire being perfected, they rested satisfied of their title to the premises as it was never made a doubt by any person in New England, or even suspected but that the jurisdiction of New Hampshire extended to a line twenty miles East of Hudson's river. They, therefore, proceeded to remove themselves, their families, and all their property upon the premises, where for many years they peaceably pursued their laborious cultivations, complying with the terms of their patents and populating an immense wilderness with useful subjects. These lands, being then settled and improved, excited the cupidity of their neighbors, and in the year 1763, or early in 1764, the desire to acquire, or rather to seize the New Hampshire well-cleared plantations, first broke forth in the proclamation of Lieutenant Governor COLDEN, requiring a return of all those names, that did or should hold possession of any lands Westward of Connecticut River under the grant of New Hampshire, that they might be proceeded against according to law. Hereupon, surveyors were sent from New York, who, avowing the authority of that government, surveyed the premises, including the houses, barns, and every other valuable improvement of the petitioners, to grant them to other people, which was actually done by Mr. COLDEN soon after the proclamation aforesaid was published.

The petitioners waited on Mr. COLDEN, remonstrating to him the injury they suffered by the proceedings and the unprecedented barbarity of such divestment.

But, they say, a day was appointed by the Lieutenant Governor to hear their claims in Council, and they were promised that grants should be suspended until that day. However, they experienced that grants were made previous thereto and all relief totally refused.

Upon inquiry, it appeared that forty grants had actually passed of the premises which were known, and, probably, many more, containing from two to twenty-seven thousand acres of the most fertile and best cultivated lands, possessed by the claimers under New Hampshire, and these grants made to single persons of Mr. COLDEN's own family connections or to officers, the largest tract not exceeding five or six grantees, under no services or conditions of settlement or cultivation except of quit rent, not even a reservation of pine timber for masts with which the country is well clothed. It is now reported that some of these grants have been altered, bearing a reservation of mast timber, and requiring some cultivation or settlement. Immediately the grantees under New York proceeded to demand a relinquishment of the claims under New Hampshire, although settled, possessed, cultivated and built upon for ten to fourteen years. Letters were

sent wherein these new patentees menaced violence to some, actions of ejectment to others, proposing leases for ten to fourteen years, at the rate of sixty bushels of wheat per annum for every hundred acres of land—others demanding three pounds York currency, equal to thirty-four shillings sterling per acre, to release the possessors. Such exorbitances, cruelties and injustice, amounted to a total prohibition.

Whereupon, some were actually driven off from their possessions, others sued in action of ejectment and harassed through different Courts at a great distance, until the cost had swelled above their personal estates, and then their persons thrown into jail, there to starve and rot until the remainder was satisfied, while their more miserable families, ousted from their possessions, had the choice to starve in the wilderness or rot and become prey to that law which had not protected them from the oppression of powerful avarice. Some of these people were taken by the Sheriff, as trespassers, though residing upon and holding their lands granted by royal authority, under the seal of New Hampshire—their persons hurried to Albany jail and all bail refused.

And when the trial came, in which they were to be ousted and, perhaps, fined for presuming a refusal to yield up their whole and honestly acquired estates to those who had unworthily obtained new grants of them under New York, the patent under New Hampshire, upon which that title was professedly grounded, was not permitted to be given to the Jury in evidence. Upon which strange events, every case went against them. Indee I, it is a sure method, and by the like, there is not the least doubt but every other patent or grant may have the same fate. It was an admirable brevity, and extremely facilitates an entire eradication of all property, unless sanctified by a grant under New York, at the enormous expense of £330 sterling for a tract of six miles square—which sum was actually paid by those few whose ability, co-operating with the distress of impending ruin, enabled and compelled them thus unreasonably to purchase peace and quiet possession of their own property; but had the patent or grant under New Hampshire been admitted to be given in evidence to the Jury, yet the petitioners were reduced to the most extraordinary disadvantages, torn away from their friends and families from sixty to eighty miles, confined in a loathsome jail, bail refused upon a civil process, their little monies wasted, without a friend to protect or lawyer to advise and direct them. Thus to have a trial at law for all the property they had on earth, before a Court and by a Jury, in effect, interested in their defeat, opposed by the most ingenious and weighty lawyers who had almost universally, directly or under cover of other names, been shrewdly made grantees under New York & located upon these desirable farms under such untoward circumstances, the event required no divination to foresee, and accordingly your petitioners suffered, and, being poor people and strangers, sunk under the frowns of Government, and interest, they could neither sustain the cost of an appeal, nor procure bondsmen to respond the event.

Thus insurmountably oppressed, their adversaries cautiously avoided laying their actions at such a sum as justifies an appeal to His Majesty in Council, and consequently foreclosed that only sure and just relief. Having thus stated the facts as they have been strongly proved to us, it now remains that some observations be offered, which we humbly presume will recommend the petitioners to an establishment in their property, and this Province to His Majesty's most gracious condescension and favor in restoring to them a district, so essential to their welfare, contiguous to, and otherwise convenient and desirable for the settlement prosperity, and orderly government of that people, now groaning under and heavily complaining of every outrage, dissension, and wretched confusion, in a degree not known even in the hour of conquest.

The Government of New York, evidently proceeding upon some title to these lands previous to His Majesty's order in Council 20th July, 1764, which expressly says "considering a representation of Lords Commissioners for trade and plantations relative to the disputes that have some years since subsisted between the Province of New York and New Hampshire, concerning the boundary line between the two Provinces, His Majesty, taking the same into consideration, was pleased, with the advice of his Privy Council, to approve of what is therein proposed, and doth accordingly hereby order, and declare the Western banks of Connecticut river as far North as the 45th degree of North latitude, to be the boundary line between the said Provinces."

It may be answered, the Province of New Hampshire, by royal authority, was to run from a point in Merrimack river due West until it met some other govern-

ment. The Province of Massachusetts and Connecticut claimed and possessed to a line of 20 miles distance East from Hudson's river, and as the Eastern boundaries of New York were not determined by royal authority, by public claim, or by acts of jurisdiction, or even by common popular supposition, further Eastward than the said 20 miles line, it was surely the duty of this Province to extend its jurisdiction thereto, in obedience to His Majesty's commission. We are further supported herein by His late Majesty's instructions to BENNING WENTWORTH, Esq., Governor of this Province, upon a report of the Lords of the Council, 24th August, 1744, requiring him to move the Assembly to provide for and support the garrison called Fort Dummer, situated on the West side of Connecticut river, or in default, the district adjoining should be granted to the Massachusetts Bay. They could with reason be required to maintain a Fort no longer within their jurisdiction; accordingly it was proposed to the Assembly, who disapproving the situation, refused and were dissolved. The next Assembly concerted and made proper grants for its support, which monies, with other instances of obedience to the royal requisitions, this Province is now paying interest for, and has a tax of three years yet unexpired to reimburse. This, of itself, cannot fail to ascertain the jurisdiction to New Hampshire Province to the royal decree in 1764. In a report of His Majesty's Attorney and Solicitor General, 14th August, 1752, it is said that sixty thousand acres of land on the Western side of Connecticut river, called equivalent land, by the determination of the boundary line in 1738, is become a part of New Hampshire, and the district have reported it part of the land the petitioners complain of being ousted from.

These we presume are the highest and fully sufficient authority that the case can require, or admit, in favor of New Hampshire, and perfectly conclusive in support of the petitioners' claims of property, but we find it most particularly justified by the treaty between the commissaries of Massachusetts Bay and New York, held at New Haven in the year 1767 in consequence of His Majesty's representation officially signified by the Right Honorable the Earl of Shelburn. In that treaty, the Commissaries for New York proposed a line, after many intermediate proposals, about thirty-seven miles West of Connecticut River, to be the boundary line between those two Provinces; wherefore we conclude that, in their own opinion, New Hampshire did extend to the same line, before the decree of 1764 had altered it, for it is plain beyond a doubt, that every reason, in behalf of the Massachusetts Bay having this line, is much stronger in favor of New Hampshire, and consequently that the grants to the petitioners, by the Governor and under the Seal of New Hampshire, are valid and legally convey a legal title to the premises which no alteration of jurisdiction can abrogate or nullify. We have purposely neglected considering the stale pretence of claim under the Duke of York's patent—that title being universally supposed to be merged in the Crown. If this is waved, yet it is surely obsolete and vacant from non use—an absurdity itself. If not, and that patent is still a private and valid existence it equally includes more than half the patent to the Council of Plymouth, and can operate to the removal of at least half a million of British subjects, after near a century of quiet possession.

An idea, so repugnant to the civil law (the common law knows nothing of settling new countries) to good policy, to common justice, and even to common sense itself, that we forbear to enlarge our report with the abundant refutations that title unalienably suffocates itself with, as this Province has not been informed of the cause that occasioned the defalcation of so large and valuable a district, now never more cited to defend themselves, nor were in the least apprised thereof until the arrival of his Majesty's orders in Council, and to this day are entirely at a loss therein, it is impossible to enter fully into our justification or properly to represent thereon to your Excellency in Council, but as some representations alone would have occasioned a measure so grievous to a loyal Province, and so uncommonly replete with eventual injury and distress to a numerous body of His Majesty's subjects we would hereby conclude such things as have occurred during our inquiry into the petition.

It has been suggested that Lient. Gov. GOLDEN had represented the inconvenience of this district appertaining to New Hampshire, and that for distance and situation it could never be well governed but in New York, of which the inhabitants were very desirous. It is with great reluctance we find it our duty to contradict such assertions. The district in question is nearer Portsmouth than New York, from sixty to three hundred and twenty miles, and it is evident that the nearer an Estate is to the Capital of its Government, the more convenient, especially in Amer-

ica where, upon most occasions of law, recourse must be had to the Capital where all appeals are heard, and which, in the present extent of New York, is almost impossible, at least it must be ruinous for from many parts of the districts taken off from New Hampshire, Massachusetts, and Connecticut, in which Provinces there is no law to conduct a prisoner through them under a precept issued in any other, consequently these poor people are deprived of this Court and the Court of Chancery in said Province, unless they travel, without the said limits of New England, a journey of at least five hundred miles, which in time and expense would swallow almost any American farmer's Estates, and, under law and justice, the greatest violence and mischief to him, and here it is worthy of observation, the bounds proposed, viz: the Western banks of Connecticut river, which we are told was represented to bear a North and South course into the Country, whereas it appears by a survey of SAMUEL HOLLAND, Surveyor General of the Northern district of America, taken officially and without the intervention of the parties, though a fact well known for twenty years past, that the course of said river is for many miles East and West, and in many places to the South of East, in so much that for more than five eighths of the river, there is no West nor East banks and, therefore, no bounds that can be known. Besides this, in the Spring and upon freshets, the river dilates more than a mile in many places, upon which, as being the most fertile, there are the best farms and most inhabitants, and by this means are in New Hampshire half the year, and the other half in New York. As to the inhabitants preferring to be in New York, their continual petitions, both here and in the public offices at home, their Agents in England appointed to solicit their restoration to New Hampshire and the manifold grievances they daily suffer and complain of in that Province, testify to the contrary beyond a volume of representations, nor can we imagine with what spirit it could be offered, or how any person could presume to utter such gross and palpable fictions, which we humbly conceive are detrimental to His Majesty's service, by causing a mutilation of a small Province, at best but scarcely able to support the government, although from the beginning to this day, both in war and peace, they have approved themselves faithful and loyal subjects to the King, and who, by their blood and treasure, defended this very territory from the enemy, annexing it to the Province of New York, already of immense extent and opulence, who, neither in the last war dare defend it from the savages, nor in the present peace give the strongest testimonies of veneration and obedience to the laws, except the receding from an agreement to distress the British commerce when it was no longer tenable can be called an adequate renovation, and an all-meritorious obliteration of their former conduct.

It is also said that Mr. COLDEN represented that the grants under New Hampshire were clandestinely obtained by enormous fees, and that a man, in no better appearance than a common pedler, travelled through New York and New Jersey, offering for sale many townships. The first part of this calumny, Mr. COLDEN knows, is false. It is contrived to injure the Governor and Council of New Hampshire. The grants were made in Council, and recorded in the Secretary's office, whereto all persons have uninterrupted and open access, with a full right to demand copies of record, which was never yet denied to any one.

It is, therefore, plain that these grants were not made in the least clandestinely, neither could they be in the very nature of the thing. Therefore, this assertion is highly unjust, untrue and injurious to His Majesty's Council of New Hampshire. As to the enormous fees insinuated, we can only say they are unknown to, and unparticipated by, the Council, and that we believe it might be proved that Mr. WENTWORTH did not receive more than £30 sterling for passing a patent of those very townships, which we know, after the decree of 1764, the same grantees were for each township compelled to pay, at New York, three hundred and thirty pounds sterling, to obtain, notwithstanding they had performed all the conditions in the patent under New Hampshire. We are surprised at the nugationness of his asserting that a man of no better appearance than a pedler offered to sell many townships. Be it so. We justly may suspect that such a person had no right to them, or may it not be reasonably apprehended that some such tool was employed merely to defame and degrade the government of New Hampshire?

Seeing that even Mr. COLDEN presumed to lay such groundless petitions before His Majesty's Ministers of State, though from his present rank and appearance so highly remote from the pedler, we heartily wish we were not thus called upon to be jealous of either, but had these grants been obtained clandestinely, and at enormous expense, how could a poor pedler-like man have acquired them? The absurdity and malice of the anecdote are equal and evident.

We are also casually informed that it was by him represented that officers would not locate in New Hampshire. If it was true, it might have been our misfortune, but by no means a matter of accusation or criminality. But the fact is otherwise; many officers did and do daily locate in New Hampshire, and it might be more reasonably complained of on our side that these did not claim in New York. Yet this is not all the insidious, cruel secret. It was suggested to many officers, and other people of respectable rank, who had obtained the royal mandamus for grants of land, that they might locate on cultivated tracts of the New Hampshire settlers, which were rendered valuable by their labors. By this means, many, not knowing the injustice of the case, did locate upon the premises, which, undoubtedly, answered the purposes of those who wished to have the poor settlers ousted under the misused names and countenance of the Royal Proclamation. These being all the matter of complaint against New Hampshire preferred by Mr. COLDEN that have been suggested to us, and the Province having had no official or other citation, nor the least notice of these or any other complaints against their jurisdiction on the premises, before the arrival of His Majesty's orders in Council of 1764, whereby they were deprived of this district, we beg leave further to represent that the unexpected decree obtained *ex parte*, and without a hearing of New Hampshire, as was formerly granted in a similar dispute with Massachusetts Bay, and is now in agitation between New York and New Jersey, and between New York and Massachusetts Bay, though immediately obeyed with the utmost minute punctuality.— Yet it conveyed the greatest surprise and grief through the Province, not only the loss they sustained of a country maintained and defended by their men and money as part of the Province by express command of his late Majesty, but more especially that it appeared as a censure inflicted for misconduct they know not to have incurred, and without an opportunity to vindicate themselves, whereby many innocent subjects, the petitioners are involved in the most distressful circumstances, far more to be regretted and marked with infinitely greater calamity than the Canadians, whom they assisted to conquer, were subjected to, by the change of government that ensued, under which they were mercifully quieted in their possessions, while the petitioners complain and lament that they are disseized and ejected solely under the pretence of an alteration in the boundary line of the two Provinces.

But as the petitioners were now excluded from this Province, the Council entertained the greatest reluctance to hear their petition, nor were prevailed upon until through repeated representations that the grievances complained of were in some degree innocently occasioned by their official advice, and that the event extremely affected the honor and prosperity of the Province which in duty to their Majesty and faithfulness to their fellow subjects they are bound to pursue.

From the same motives, we have delayed returning our report daily hoping that the petitioners would be relieved, and that their petitions would be laid before His Majesty, from whose paternal care of his remotest subjects the most solid relief will undoubtedly result.

We, therefore, beg leave to report as before expressed, and that our humble address be presented to His Majesty representing the injury sustained by his loyal and obedient Province of New Hampshire by the alteration of the boundary line of said Province in favor of the Province of New York, also of the sufferings resulting to many thousands of His Majesty's good subjects, thereby most humbly praying that His Majesty will be graciously pleased to restore and re-annex the premises to this Province, which event, we humbly conceive, will give peace and relief to the petitioners, and highly promote population and improvement of that district, facilitate and augment the revenue of quit rent, and preserve the pine timber fit for masts, accommodate the inhabitants in the mode, situation and distance of their provincial government and be, in every other view and tendency, a blessing to that country and plant an everlasting gratitude for such an instance of the Royal benignity of His Majesty's most happy government.

All which is humbly submitted to your Excellency in Council, by

DANIEL PIERCE,
 GEORGE JAFFREY, } Committee.
 DANIEL ROGERS, }

PROVINCE OF NEW HAMPSHIRE.

IN COUNCIL 16TH AUGUST, 1771.

The foregoing report having been read, voted and resolved that the same be accepted and presented to His Excellency the Governor, praying His Excellency will be pleased to transmit the same to be laid before His Majesty, humbly imploring the Royal condescension to re-annex the district on the West side of Connecticut river taken from this Province and added to the Province of New York, by His Majesty's order in Council, in the year 1764, and that His Excellency will be pleased to recommend the same, being for His Majesty's service and for the just benefit of this Province by such further explanations and observations thereon as to His Excellency shall seem proper and just.

THEODORE ATKINSON, *Sec'y.*

**Copy of a Letter from the Widow of Col. Seth Warner to Dr.
William Samuel Johnson.**

WOODBURY, October 8th, 1786.

Honored Sir:—Though I am unacquainted with your person, yet being acquainted with your character, I am emboldened to request your honor to take the care of a memorial herewith sent, begging the favor of you to take the charge thereof, and lay the same before the honorable Congress. Though I am poor and needy, the thing did not originate in my breast; but the officers, and those acquainted with Col. WARNER's conduct in the last war, urged me to make the trial, and even offered to wait on me to Congress for that purpose. But my poverty prevents me from making such a journey, together with the uncertainty of obtaining a hearing. I seek not for great things, but should be glad to have a sufficiency to educate my fatherless children, so that they may not be contemptible among the human race.

I am, Honored Sir,

an unknown, disconsolate widow,

ESTHER WARNER.

To WILLIAM SAMUEL JOHNSON, Esq.

Mrs. Esther Warner's Petition to Congress.

To the Honorable the President and Members of the Congress of the United States of America, now assembled at the City and State of New York:

The petition of ESTHER WARNER, widow and relict of Colonel SETH WARNER, formerly of Bennington, in the State of Vermont, more lately of Woodbury, in the State of Connecticut, humbly sheweth: That Colonel WARNER, early in the contest of America with Great Britain, for the maintaining of their natural rights, in opposition to British oppression and tyranny, took an active part previous to the Honorable Congress' appointing him to the command of a regiment; and so distinguished himself by his zeal and heroic actions as that the Honorable Congress was pleased to honor him with the command of a regiment—whose conduct is particularly described in a recommendation by the Governor and principal inhabitants of the State of Vermont and some in Connecticut, to the President of Congress, dated July 7th, A. D. 1786, herewith transmitted to your honors, some of which persons are officers in the regiment under his command, and are personally knowing to the facts therein related. The circumstances of your disconsolate petitioner as to her interest and circumstances in life will appear by certificate of DANIEL SHERMAN, Judge of Probate, herewith transmitted, dated Oct. 3d, A. D. 1786, by which your honors will see that your unhappy petitioner hath nothing to support herself and three children, only her own industry—having two sons and a daughter, two of which are unable to earn anything by their labor. Your petitioner would further represent to your honors that the Colonel was so taken up in the defence of the Country in the late war, that he wholly neglected his own interest, by means of which he lost much of his estate, as it lay chiefly in lands in the State of Vermont, for want of taking seasonable care thereof, and although your petitioner had a hard task in looking after the Colonel in his last sickness, as the Co-

lonel lay long confined, unable to help himself, and your petitioner had the unhappiness to see her dear companion, as it were, die by inches, (as a mortification began in his feet and by a slow progress proceeded up to his body, which continued for months before it put an end to his valuable life.) Notwithstanding your petitioner had the chief care of looking after her dear companion, it yielded her some consolation that she had the opportunity of looking after the Colonel in his last sickness. Had it been the Colonel's fate to have fallen in battle, as many did that were engaged with him, your petitioner is informed that she should be entitled to receive some gratuity from your honors.

Your petitioner, therefore, can but hope inasmuch as the death of her dear husband was in consequence of the wounds and hardships he received in his country's service in the late war, your honors will be graciously pleased to take her distressed circumstances into your wise consideration and grant her such a bounty as that she may be able to support herself and children, and give them such education as that they might not be contemptible among the human race. The which your petitioner is the more embolden to ask your honors, as she hath been informed your honors have, in some instances, been liberal to the posterity of those who have distinguished themselves in their country's service in the late war—for which, as in duty bound, your unhappy petitioner shall ever pray.

ESTHER WARNER.

Dated at Woodbury the eighth day of October, A. D. 1786.

[The following report of a Committee appointed by the General Assembly of the State of New York "to prepare a draft of a state of the just rights of this Colony (New York,) with respect to encroachments made on its Eastern boundary," is republished from the Journal of the General Assembly of New York, 1773, pp. 90—108, and presents the views entertained at that date by the authorities of the Colony of New York. The facts and arguments are of great historical interest and the entire draught will abundantly compensate for the time spent in its perusal. It may be regarded as a *Per Contra* to the report made in New Hampshire and also comprised in this Appendix.]

A STATE of the Right of the Colony of New York, with respect to its Eastern boundary on Connecticut River, so far as concerns the late encroachments under the government of New Hampshire.

In considering the objections which have been raised by the government of New Hampshire against the Eastern extent of this Colony, to the banks of Connecticut river, the pre-occupancy of that river by the Dutch will be of moment. But whether Capt. Hudson, who was the discoverer, acquired any right;—whether he transferred his pretensions to the States General;—whether his conveyance was valid;—or, finally, whether the Crown of England was not already interested with the country from the discoveries which had been made for the English by Sebastian Cabot, in the reign of King Henry the VIIth? are questions foreign to our purpose; since it is not the *right*, but the *priority of possession* of the Dutch, which is at present material, and to be supported.

In the year 1609, Hudson first discovered the coast between Martha's Vineyard and the first Virginia settlement; and it then began to be minutely explored, and the bays, rivers and islands ascertained and distinguished.

Hudson's river was again visited in 1610, and in the following years by Dutch ships, and their Colony advanced with such rapidity, that in 1612 they had a town and Fort on the island of Manhattan's, now New York; and in 1615, another town and Fort at Aurania, now Albany, 160 miles up Hudson's river; previous to which the States General, in 1614, granted a patent to some of their subjects with the privilege of an exclusive trade in this country, which they denominated New Netherland.

In 1623, they made a grant of the soil to the West India company; who in the same year erected Fort Nassau, on the East side of Delaware Bay, and Fort Good Hope on Connecticut river; and upwards of 35 miles from its mouth. Near to this ancient fortress, the remains of which are still to be seen, the town of Hartford hath since been built under Connecticut.

Fort Casimer, now called New-Castle, on the Delaware, they built in 1651: About four years afterwards they removed the Swedes, who were then settled in that part of the country, and thus became possessed of the West side of Delaware Bay, now called the three lower counties.

There is not the least doubt but that the Dutch actually enjoyed the exclusive possession, trade and advantage of the whole Connecticut river, long before it had been approached by any English subject; and had purchased almost all the lands on both sides of it from the natives.

It is equally clear that they considered and claimed all the country to the Westward of Connecticut river, and as far Northward as the river St. Lawrence, as part of their Colony of New Netherland; and we find it so laid down in all the ancient maps.*

When the first war between England and Holland became inevitable, King Charles the Second, by letters patent, dated the 12th day of March, 1663—4, granted to his brother, the Duke of York, the tracts of country which comprehended New York, to render this gift effectual, before the war was proclaimed, a fleet and land force were sent out to remove the Dutch, and put the Duke in possession.

The Dutch Governor Stuyvesant, in his letter dated the 2d day of September, 1664, N. S. in answer to a letter from Governor Nicholls, in August preceding, demanding a surrender of the Forts and the countries possessed by the Dutch, under his command, denied the title of the King of Great Britain to this part of America; insisted on the rights of the States General as founded, not only on the first discovery, but on purchases from the native proprietors, and a long, peaceful and uninterrupted possession; and protested against every act of hostility as an infraction of the alliance and treaty of peace then subsisting between His Britannic Majesty and the States General.

But however clear his opinion of the right of the Dutch, in no condition to defend it, he found himself obliged to submit to a superior power; accordingly, on the 27th day of August, 1664, he surrendered all the country, which the Dutch then possessed, to King Charles the Second.

A capitulation was previously agreed upon and granted for the security of the inhabitants: By the third article it is declared, *That all the people shall continue free denizens, and shall enjoy their lands, houses and goods, wheresoever they are within this country, and dispose of them as they please.*

Afterwards the States General, by the treaty of Breda, in 1667, made a cession of this country to the Crown of England.

During the succeeding war between the two nations, the Dutch, in 1673, re-conquered a part of it; but by the definitive treaty of London, in 1674, they again surrendered, and finally yielded all their claim to the Crown of England.

To remove any doubt of the validity of the Duke's title, either from the want of seizin in the Crown when it originated, or on account of the intermediate conquest by the Dutch, it was confirmed to his Royal Highness by further letters patent, dated the 29th day of June, 1674.

The descriptive part in both grants is the same, and comprehends, among other lands, "All that island or islands commonly called Matawacks, or Long Island, together with Hudson's river; and all the land from the West side of the Connecticut river to the East side of Delaware Bay."

Connecticut river extends into the country, upon a Northerly direction, beyond the 45th degree of North latitude, where we find its head. Hudson's river, in its general course, is nearly parallel to Connecticut river, and takes its rise a little to the Southward of that latitude.

The Duke continued proprietor and chief governor of this province, till he ascended the throne, when his right was merged in the royal authority. On his

*See Ogilvy's America, published in 1671, and his map at page 168, Section *Nieu Nederlandt*, where the country to the Southward of the River St. Lawrence, is called *Nova Belgica*, five *Nieu Nederlandt*, and the river itself is called *Rio St. Lawrence*, alias *De Grootte Rivier van Nieu Nederlandt*.

See also Blave's America, published in Amsterdam, in 1663, vol. xi, and his map inscribed *Nova Belgica et Anglia Nova*.

See also Johannis Van Kullen's Atlas.

abdication, it passed to King William, his successor, as lord proprietor, and royal sovereign.

In the Duke of York's commissions to his several lieutenant governors, Major Edmond Andross, on the first day of July, 1764, and Col. Thomas Dongan, on the 30th day of September, 1682, among other descriptions of the boundary of this province, are expressly comprehended all the land from the West side of Connecticut river, to the East side of Delaware Bay.

King William and Queen Mary, by their commission dated the 4th day of January, in the first year of their reign, appointed Henry Slaughter to be governor of the province of New York, *and the territories depending thereon*; the boundaries whereof to the Connecticut river on the East, by the above and many other grants, commissions and public acts, were notorious.

In all subsequent acts and commissions, this Colony is described by the same general words, *the province of New York and the territories depending thereon*; and its boundaries have never been altered by the government here or at home.

Indeed, the Colony itself has been diminished by the Duke of York's transfer of that part of it which is now called New-Jersey to Lord Berkley, and Sir Philip Carteret.—By our agreement with Connecticut, in 1683, under mutual acts of legislature, subject to the royal approbation,—and by his Majesty's proclamation of the seventh day of October, 1763, establishing the limits of Quebec.

The latter is reserved for the state of the rights of this Colony respecting the grants formerly made by the French government of Canada, of lands on Lake Champlain, and at and to the Southward of Crown Point. Nor need any thing here be said of the grant of New Jersey, it being of no moment in the present controversy.

But it will be of use to explain the settlement with Connecticut, because it has been misconstrued to our prejudice, both by Massachusetts Bay and New Hampshire.

And here it is necessary to premise, that the New England Colonies were founded on the grant of King James the first, to the council of Plymouth, dated the third day of November, in the 18th year of his reign, of the property and jurisdiction of the lands in America, (called New England) from forty to forty-eight degrees of North latitude.

That it was the intention of the Crown that this right should not interfere with the claims and possessions of the Dutch in this country, which were undoubtedly well known in England, is evident from a recital to the following purpose, "Now forasmuch as the King has been certainly given to understand by divers good subjects that have for these many years frequented the coasts and territories between the degrees of forty and forty-eight, that there are no other subjects of any Christian King or State, or by any authority from their sovereign lord or princes, actually in possession of any the said lands or precincts." And also from a proviso in these words, "*Provided always*, That the said lands, islands, or any of the premises by the said letters patent intended or meant to be granted, were not then actually possessed or inhabited by any other Christian power or State."

Most of the Dutch Colony of New Netherland was, however, included within the bounds of this grant; it was therefore void for the false suggestion, and if it had been valid, the possessions of the Dutch were at least excepted and excluded by the saving clause.

The council of Plymouth by their deed dated the 19th day of March, in the 3d year of the reign of King Charles the first, granted to Sir Henry Roswell and others all lands from three miles Northward of any and every part of Merrimack river, to three miles Southward from any and every part of Charles river and of Massachusetts Bay, (East and West from sea to sea) with all islands on the East and Western coasts.

Within this description also, part of the New-Netherlands is comprehended.

Sir Henry and his associates, having formed the design of planting a Colony, thus became invested with the right of soil; but they still wanted the powers of jurisdiction or government, which the Council of Plymouth never pretended to transfer.

To remedy this inconveniency a royal charter was obtained, dated the 4th day of March, 1628—9, incorporating them by the name of the Governor and

company of the Massachusetts Bay, with ample jurisdiction and powers of government.

But these grants are liable to both the above objections, they are null as founded upon a void patent, or at the best they cannot convey what was expressly excepted out of Plymouth patent by the proviso.

If it should be pretended that the charter, from the liberal terms of the granting clause, invested a new right in aid of what was conveyed by the deed from the council of Plymouth, it must be a satisfactory answer that it also includes an express proviso, that if the lands thereby intended to be granted, were, at the time of the patent to the council of Plymouth possessed or inhabited by any Christian prince or State, the grant, as to such part, should be utterly void.

We need not enlarge on these objections. The Massachusetts charter was vacated, and the title of that Colony now solely depends on their new charter of 1691 as we shall have occasion more fully to observe in the sequel. Thus much is necessary in this place place to enable us to explain

THE CLAIM OF CONNECTICUT.

This Colony was formed by a coalition of two distinct societies ; that of Hartford, consisting, according to Doctor Douglass, of some discontented people who removed from the Massachusetts Bay about the year 1636 ; and that of New-Haven, planted the year after by emigrants from England, under the direction of Mr. Eton.

These little Colonies were planted without the least right or authority from the Crown, nor had any legal government. Under a voluntary association they assumed the exercised jurisdiction after the model of the Massachusetts Bay. For some time the Dutch seem to have considered the people of Hartford as their tenants, and probably it was with their approbation and under their right that they first settled.

We find from the Dutch records, that the following conditions were proposed to them in the year 1642.

*“ **Conditiones a D. Directore Gen. Senatuis Novi Belgii, Dominis Weytingh atque Hill, Delagatis a nobili senatu Hartfordiensi, oblatae.**

Progro agro nostro Hartfordiensi annuo persolvent Præpotentiss. D. D. ordinibus Fæd Provinciarum belgicarum aut eorum vicariss decimam Partem Reventus Agrorum tum aratro tum ligone aliove cultorum medio ; Pomariis, Hortisque oleribus dicatis Jugerum Hollandium, non excedentibus exceptis ; aut decimarum loco pretium nobile postea constituendum tam diu quam diu possessores ejusdem agri futuri erunt.”

“Actum in Arce Amstelodamensi, in Novo Belgio die Julii, 9 Anno Christi, 1642.”

We have no evidence that the English acceded to these proposals ; nor is it probable, considering their superior strength, that they ever did. On the contrary, they daily extended their possessions, and in 1643, the Colonies of the Massachusetts Bay, Plymouth, Connecticut and New-Haven, entered into a league both

*In English thus.—Conditions offered by the Director General of the States of New Netherland, to Messrs. Weyting and Hill, delegates from the honorable Assembly of Hartford.

They shall annually pay to their high Mightinesses the States General of the United Netherlands, or their deputies, for our territory at Hartford, the tenth part of the increase of their lands that are cultivated with the plow, spade, or any other means of cultivation ; excepting such orchards and gardens for raising pot-herbs as shall not exceed an acre of Hollan d measure ; or instead of the said tenth part, a suitable consideration hereafter to be paid as long as they shall possess the said territory.

Done at the Fort in Amsterdam, in New-Netherland, the 9th day of July, in the year of Christ 1642.

against the Dutch and Indians, and grew so powerful as to meet shortly after upon a design of extirpating the former. The Massachusetts Bay, probably, from a sense of the impropriety of such an attempt without orders from England, declined the enterprise.

The Dutch had long beheld the increasing power of their neighbors with the utmost anxiety.

Governor Stuyvesant, an active and faithful officer, as is abundantly proved by his letters remaining among the Dutch records, in one to the West India company, dated the 20th day of April, 1660, laments the desperate situation of the affairs of New Netherland. "Your honors (says he) imagine that the troubles in England will prevent any attempt on these parts. Alas! they are ten to one in number to us, and are able without any assistance to deprive us of the country when they please." On the 29th of June in the same year, he informs them that the demands, encroachments and usurpations of the English, gave the people here great concern. "The right to both rivers (says he) by purchase and possession is our own without dispute."

While the affairs were in this situation, the English of New Haven and Hartford thought it prudent to apply to the Crown for a grant.

In their petition they set forth that they had obtained their possessions partly by purchase and partly by conquest.

King Charles the second, on their application by letters patent, dated the 23d day of April, 1662, granted them the Colony of Connecticut under the following description "Bounded on the East by Narraganset river, commonly called Narraganset Bay, where the said river falleth into the sea; and on the North by the line of the Massachusetts plantation; and on the South by the sea, and in longitude as the line of the Massachusetts Colony, running from East to West; that is to say, from the said Narraganset Bay on the East, to the South sea on the West part."

This being a Crown grant, on the suit and petition of the grantees, is to be taken most beneficially for the King. The descriptive words, and the intention of the grant, will, in legal construction, be satisfied by giving the Colony the same length as the Massachusetts Bay; and it is plain, both from the recital and the saving clause in the Plymouth Patent, on which the Massachusetts title was founded, that the latter could not, in any sense, extend to the Westward of Connecticut river.

It was understood in England in this light, and that it did not interfere with the Dutch Colony of New Netherland; for within only two years afterwards King Charles the Second, expressly granted all the country to the Westward of Connecticut River to the Duke of York; and that this grant was particularly designed to include the Dutch possessions, seems manifest from the circumstances which accompanied it. No sooner had it passed the great seal than an armament was equipped to subdue the Dutch, and the command given to Col. Nicholls, who came over both in quality of general of the expedition, and lieutenant governor under the Duke.

Governor Nicholls accordingly asserted his Royal highness' right to the country on the West side of Connecticut river, which immediately gave rise to a controversy between him and the corporation of Connecticut; but he thought it prudent to terminate it by an amicable negotiation. He found them already possessed of Greenwich and Stanford, two towns within 20 miles of Hudson's river; and that they had several other settlements not much more distant. His government was feeble, and chiefly consisted of the Dutch, upon whose attachment he had no reason to depend; and he foresaw the greatest difficulties if he should attempt to bring the Connecticut planters under subjection by force. Besides, when lands were of little value, it seemed more eligible to secure the friendship than to excite the resentment and hatred of a powerful neighbor. On these principles he recommended it to the Duke to relax from his rights, and to yield to them the part they then occupied. Such being his sentiments, a fruitless attempt was made for establishing a boundary between New York and Connecticut, in the first year of his administration. The proceedings and the mistakes so prejudicial to the Duke, into which he was drawn upon that occasion, as well as several of his letters to his Royal Highness, plainly prove that he had a very incompetent knowledge of the geography of the country, or of the rights with which he was intrusted. However, a final compact took place between the two Colonies, in the year 1683, when their respective commissioners agreed that a twenty mile line from Hudson's river should, for the future, become the partition between the Duke's territories and Connecticut; but

subject to the approbation of the King and the Duke. This agreement was confirmed by King William, on the 20th day of March, 1700.

That the line owed its foundation merely to prudential reasons, and was not grounded on the right of either Colony, is incontestible. The Duke claimed to Connecticut river,—Connecticut to the South sea. From pretensions so repugnant, there was no more room to fix on a twenty mile line from Hudson's river as the boundary, than on a line at the distance of 30, or 10, or 5 miles. A disposition to leave Connecticut in the possession of her actual settlements, for the sake of peace, preponderated, as was the true motive of the agreement. This is confirmed from the cession of Greenwich and Stanford, in favor of Connecticut, though they were within the twenty miles.

THE MASSACHUSETTS' CLAIM

stands by no means in so respectable a light as that of Connecticut.

We have already remarked, that the old charter was adjudged void. It was so determined in the high Court of Chancery in England, in 1684, and they submitted to the decree, and never took any measures to obtain a reversal; nor can their passivity be ascribed to the arbitrary councils of King Charles, since the revolution (which happened a few years afterwards) gave them the fairest opportunity to obtain redress, had they been injured: It seems therefore just to conclude, that they were convinced of the defects of their former grant, and thought it more for their interest to solicit and accept of a new charter, which they accordingly procured on the 7th day of October, 1691. That province is here described as follows:—"All that part of New England, in America, lying and extending from the great river, commonly called Memomack, or Merimack, on the North part; and from three miles Northward of the said river to the Atlantic, or Western sea, or ocean, on the South part; and all the lands and hereditaments whatsoever, lying within the limits aforesaid, extending as far as the outermost points or promontories of land called Cape Cod and Cape Mallabar, North and South, and in latitude, breadth and in length and longitude, of and within the breadth and compass aforesaid, throughout the main land there, from the said Atlantic, or Western sea or ocean, on the East part, towards the South sea; or Westward, *as far as the Colonies of Rhode Island, Connecticut, and the Naraganset country.*"*

These words (*as far as*) being in the case of grant of the Crown on the suit of the party, in legal construction, carry the Massachusetts Bay Colony no further Westward than till it meets the Colony of Connecticut, and not to Connecticut river, and much less to the Westward of it. And it is worth a remark, that Connecticut itself, at the time of the new charter, did not in the knowledge of the Crown, extend Westward of that river; nor did it, in fact, till nine years afterwards, when the agreement of 1683 was rendered effectual by the royal approbation.—Besides, it is contrary to reason to suppose that King William and Queen Mary could possibly have intended, by that charter, to diminish, or grant away any part of New York, which was a royal Colony, under their own immediate government, without express mention thereof in the charter, and without any notification to Colonel Slaughter, the then Governor, that the Crown had granted such a part of what was before within his jurisdiction, by their Majesty's commission.

Under circumstances so favorable to the rights of this Colony, we have great reason to complain of the unwarrantable encroachments under the authority of the government of the Massachusetts Bay, by which a valuable tract extending from Connecticut river, within 20 miles of Hudson's river, has been wrested from us.

Their conduct seems the more inexcusable, as they must have known that such encroachments were not only disrespectful to his Majesty's authority, and big with great mischiefs and disorders, but were highly injurious to private property, great part of these lands having anciently been granted to his Majesty's subjects, under the great seal of this Colony.

So long ago as the year 1685, King James the Second, by letters patent, under

* Note. This new grant recites that the old charter was vacated by a judgment in chancery, in Trinity term, 1684, and that the agents of the Colony had petitioned to be incorporated by a new charter.

that seal, granted to the Rensselaer family the Manor of Rensselaerwyck, extending from Hudson's river, both on the East and West sides, 24 miles.

Westenhook was granted under the great seal of this province, on the 6th day of March, 1705, and its Eastern bounds are about 30 miles from Hudson's river.

Hosick was granted on the second day of June, 1688, and extends above 30 miles from the river.

These several grants cover the country the whole breadth of the Massachusetts claim, and not only offer the highest evidence of the ancient right and jurisdiction of this Colony, as far as the controversy respects the Massachusetts Bay, but authorize a remark of no small moment, to wit: That with respect to the lands included within such of those patents as are prior, in point of time, to the Massachusetts charter of 1691, the Crown had clearly parted with its right under the seal of New York; and so far had no estate left to be disposed of, or upon which that charter could have operated, had its boundaries been ever so unquestionable and comprehensive.

As their example, and the agreement with Connecticut, are the only pleas which have ever been held up by the government of New Hampshire to justify their claims and encroachments, it seemed indispensably necessary to give a general idea of both.

Nor ought it to pass unobserved, that the Colony of New York has a double title to the country on the Wood Creek, and on both sides of Lake Champlain; 1st by the original grant to the Duke of York, which established Connecticut river as our ancient Eastern boundary, and which, without any alteration by the agreement with Connecticut, has continued such down to the present day. And 2dly, by the subjection of the five nations to the Crown of England by treaties with this government.

The submission of these nations took place so early as the year 1683, and is proved by several treaties between them, Col. Dongan and our other Governors, which are preserved in the office of the Secretary for Indian affairs; and at the trade and plantation office in England; and some of them in Mr. Colden's History of the five nations.

That the country on Lake Champlain belonged originally to the five nations is proved by all the ancient maps,* where we find the lake called Lake Iroquois, (the French name for the five nations) or Mere des Iroquois, and the river (called by the French Sorell) which leads from the lake into the river St. Lawrence, Rivier des Iroquois, and the country about the Lake Iroquisia.

This government accordingly discovered an early attention to their rights in that part of the country.

So long ago as the year 1696, a grant passed the great seal of this Colony to Godfrey Delliou, for a tract of land extending from the North bounds of Saratoga (which lies on both sides of Hudson's river, about thirty miles North of the city of Albany) to the Rock Rosian, a station indisputable, and which is well known to lie on Lake Champlain, and above twenty miles to the Northward of Crown Point. This tract extends twelve miles East of Hudson's river, and the same distance East from Wood Creek and the waters to the Northward; and it is worth a remark that such was its value and importance even that early day, that the legislature conceived the grant of it to be too great a favor for one subject, and passed a law in 1699, repealing it as extravagant.

The tract called Wallumscock, which reaches from the rear bounds of Saratoga Eastwardly so as to be upwards of 23 miles to the Eastward of Hudson's river was also granted under our great seal, the 15th day of June, 1739.

In short, the faithless encroachments of the French on Lake Champlain—their fortifying Crown Point and Ticonderoga—the many depredations they committed in concert with the savages in their alliance—the destruction of the frontier vil-

*Vide Ogilvy's America, published in 1671, and the map at page 168, Sect. Nieuw Nederlandt; and his account of Lake Iroquois (Champlain) and the river Iroquois, (Sorell) page 166.

See also the map inscribed Nova Belgica et Anglia Nova, published in xi vol. Geographiæ Blavianæ, in 1662, page 35.

And Johannis Van Keulen's Atlas, published at Amsterdam in 1720.

lages and settlements, and repeated massacres of the defenceless inhabitants, (which exhibited a scene of inexpressible horror and distress) have alone prevented the improvement and cultivation of this valuable part of the Colony.

Having thus, in general, established the right and the ancient exercise of jurisdiction of this government to the lands Westward of Connecticut river, the way is open to consider the principles upon which

The extraordinary claim of NEW-HAMPSHIRE is founded.

The council of Plymouth, on the 19th day of March, 1621, granted to John Mason their Secretary, a tract of land from Nuemkeag to Merrimack river. In the year 1629, they granted him a tract of land between Merrimack and Piscataqua river, sixty miles up each river, to be bounded on the West by a line across from river to river.

Both these grants were united and confirmed to Mr. Mason by a new grant from the council of Plymouth dated the 22d day of April, 1635, under the following description:—"A portion of main land in New England, from the middle of Merrimack river to proceed Eastward along the sea coast to Cape Anne; and round about the same to Piscataqua harbor, and so forward up within the river Newickawanock, and to the furthest head thereof; and thence North-Westward till sixty miles be finished from the first entrance of Piscataqua harbor; and also from Nuemkeag, through the river thereof, up into the land, West, sixty miles; from which period to cross over land to the sixty miles end, accounted from Piscataqua through the Newichawanock river, to the land North-Westward. And also all the South half of the Isles of Shoals, together with all other islands and islets, as well inbayed as adjoining, laying abutting upon or near the premises, within five leagues distance, and not otherwise granted by special name before the 18th day of April, 1635, the said tract or portion of land to be called and distinguished by the name of New Hampshire."

We have already observed that though the council of Plymouth claimed and granted the property, yet they never pretended to the right of delegating jurisdiction or the powers of government.

To remedy this defect, King Charles, by letters patent dated the 19th day of August, 1635, confirmed to Mr. Mason this grant or tract called New-Hampshire, with powers of government and jurisdiction as in the palatinate or bishoprick of Durham.

Thus was this little Colony established, comprehending no more than about twenty miles sea line in breadth, and sixty miles inland or in length.

Mason died in the close of the year 1635, and by will devised New Hampshire to John Tuston (to be called Mason.) John dying before he came of age, it descended to his brother Robert Tuston Mason, who was not of age till 1650. During his minority the Massachusetts government took the Colony, without any authority from the proprietor of the Crown, on its own disposal and protection.

Mason, after the restoration, petitioned King Charles the second for redress.—In 1675, a report, in favor of his title, was made by the Crown officers, and the King sent a mandatory letter on the subject to the Massachusetts Bay Government. Mr. Stoughton and Mr. Buckley being sent over as agents by that Colony to answer Mason's complaint, they, as attorneys legally constituted by the Massachusetts Bay Colony, renounced and disclaimed all right to New Hampshire; which being duly reported, was confirmed by the King and privy council the 10th day of July, 1677. But it appears that while Massachusetts Bay exercised jurisdiction over that Colony, they made no scruple to grant away the lands; for after their disclaimer, and the above mentioned order of the King in Council thereupon, all the grants they made beyond their boundary (to wit) three miles North of Merrimack river, were vacated by an act of Assembly of the Massachusetts Bay passed in the year 1679.

The Mason family, however clear their title, derived from it no advantage till the year 1748, when they recovered the land which remained vacant and unpatented by New Hampshire. The residue the occupants still retain.*

*The present possessors (says Doctor Douglass) have no other claim to their land than possession, and some uncertain Indian deeds. a Doug. 22.

This is a view of the title and limits of the Colony of New Hampshire as granted to Mason. Instead of crossing Connecticut river it did not reach it by twenty miles, and the lands, between its West bounds and the river, remained vested in the Crown and extra-provincial, till the year 1742,

That it remained vested in the Crown is incontestible, for although the council of Plymouth parcelled out part of their territories into several distinct Colonies or settlements, yet this tract was included in neither of them; it therefore reverted to the Crown on the surrender of the Plymouth grant on the 7th day of June, 1635.

Indeed originally the government of the Massachusetts Bay insisted that their grant extended from three miles North of the Black Rock, where Merrimack river emptied itself into the sea, when the charter was granted, to three miles North of the fork or crotch, where the river first receives the name of Merrimack; and from thence due West, which formed a parallelogram of upwards of fifty miles in breadth, to the Northward of their real boundary; comprehending not only part of those lands, but a considerable portion of Mason's.

This construction being thought unwarrantable, a contention arose between that province and New Hampshire, for the determination of which commissioners were appointed, on the 3d day of April, 1737, under the great seal of Great Britain. From their decree both parties appealed.

It is observable, that the question turned singly on the true place of beginning, and the course of the North boundary line of the Massachusetts Bay. Its length or termination, after striking the West bounds of Mason's grant, did not concern New Hampshire, nor could it have fallen under consideration.

The appeal was heard before the King and council, on the 5th day of March, 1739, and some time afterwards it was finally determined that the line should begin three miles North of the mouth of Merrimack river; and that a parallel to Merrimack river should be continued from thence, as far as the Fluxure at Pan-tucket Falls; and from a station three miles North of the Fluxure; or Falls, the line should run West ten degrees North, by compass to the New York East boundary.

The province of the Massachusetts Bay had formerly assumed jurisdiction over some land properly belonging to Connecticut. Several years before the above determination, to wit, in the year 1713, they gave Connecticut as an equivalent 105,793 acres, which they represented as a part of their vacant province lands. It was comprised in four distinct parcels, one of which containing about 40,000 acres, was situate above Northfield, upon Connecticut river, and to the Northward of the line established as above mentioned, for the actual boundary of the Massachusetts Bay.

An adjudication, so solemn and decisive, ought for ever to have extinguished all claim under the Massachusetts Bay to the lands to the Northward of that boundary; but since the confirmation, by the Crown, of the ancient right of New York, on occasion of the intrusions under New Hampshire, (in the manner hereafter related) a title is stirred up to those lands, on a pretence that they were originally a part of the Massachusetts Bay province. To justify this visionary claim, it is alledged, that at the time of submitting the dispute between the Massachusetts Bay and New Hampshire to commissioners, it was stipulated by these Colonies that the decision should not affect private property.

But surely such a reservation can on no construction relate to any lands but what were controverted between, and claimed by both contracting parties; and the government of New Hampshire, at least, could not then have entertained an idea of a claim to the Westward of Mason's grant. To apply it, therefore, to what was never within the limits of either, and to suppose that New York, which comprehends it, and which was no party to the stipulation, should be bound by it, is so extraordinary, that a further refutation must be unnecessary.

To proceed: The old Colony of New Hampshire, or Mason's grant, had for many years been under the jurisdiction of the same governor as the Massachusetts Bay, but by a distinct commission.

While the dispute subsisted respecting their common boundary, the Assembly of New Hampshire preferred a complaint to the King and council against their Governor, charging him with partiality towards his more profitable government of the Massachusetts Bay. The complaint appearing to be well grounded, a separate Governor for New Hampshire was appointed.

On this occasion, a commission issued to Benning Wentworth, Esq. the first Governor, dated the 3d day of July, in the 15th year of the reign of King George

the second; and the old Colony of New Hampshire was greatly extended, so as to include a large district, which till then had remained extra-provincial and particularly the lands from the West bounds of Mason's grant, to the West side of Connecticut river, the ancient boundary of the Colony of New York.

It is thus described in the commission:—"Bounded on the South side by a similar curved line, pursuing the course of Merrimack river, at three miles distance on the North side thereof; beginning at the Atlantic ocean, and extending at a point due North of a place called Pantucket Falls, and by a straight line drawn from thence due West across the said river, till it meets with our other governments; and bounded on the South side by a line passing up through the mouth of Piscataqua harbor, and up to the middle of the river, to the river of Newichwanock, part of which is now called Salmon Falls, and through the middle of the same to the furthest head thereof, and from thence North two degrees Westerly till one hundred and twenty miles be finished from the mouth of Piscataqua harbor aforesaid, or until it meets with our other government."

Hardly can it be conceived that a boundary so plainly described could have become an occasion of controversy.

There was no room to suspect that the Crown intended to abridge any of the *old* Colonies in favor of the *new*; since without the most distant intimation of such a design, the limits of the adjoining governments are given as the extent of New Hampshire.

But neither the clearest evidence of right, nor the most explicit directions of the royal commission, have proved sufficient to protect us from the encroachments of New Hampshire, nor the mischiefs and confusion which are inseparable from a contention of this nature between two Colonies.

Governor Wentworth was pleased to conclude, that because Connecticut and the Massachusetts Bay Colonies had carried their Western boundary within twenty miles of Hudson's river, that, therefore, New Hampshire must be entitled to the same license.

His emissaries have since discovered another reason, which the Governor seems never to have entertained. They alledge

That in the year 1744, an order was sent from the Crown to the Governor of New Hampshire, importing, that if that government did not provide for Fort Dummer, there would be a necessity for annexing the Fort, with a suitable district of country, to the province of the Massachusetts Bay.

On this foundation are the boundaries of New York attempted to be circumscribed.

The argument drawn from our agreement with Connecticut is, it is conceived, fully refuted, by shewing, as we have already done, that the reasons and motives to which it is to be ascribed, were merely prudential and grounded on the claim or the boundaries of neither Colony, one having contended for the South sea, and the other for Connecticut river.

What then can be inferred from this treaty to the disadvantage of New York? If from generosity or policy, or for the sake of peace, part of an estate should be ceded to a contentious or importunate neighbor, is it to be construed into a surrender and extinguishment of the whole?

With respect to the Massachusetts Bay, we have shewn that they have no better title to the Westward of Connecticut river, than a possession acquired by force and intrusion, and which has proved the unhappy occasion of spilling the blood of the innocent, and terminated in despoiling a number of the inhabitants of this Colony of their rightful property.

This dispute was agitated between our respective commissaries, at a late treaty at New Haven, 1767, and where the Massachusetts Bay had the assistance of Governor Hutchinson, one of their ablest men, and the most conversant in subjects of this nature; and it is presumed that it must appear from a candid perusal of the proofs and arguments then offered, that the Eastern boundary of New York, upon Connecticut river, was clearly maintained.

It is our misfortune that the lands, which have so long been the subject of contention with that province, are fully occupied.* Hence, though firmly persuaded

* Upon these settlements one of their own historians makes the following candid remark, "*A few years since, the General Assembly of the Massachusetts Bay was in the humor of distributing the property of much vacant province land,*

that when the merits of the case should be considered for a final adjudication, the right of this Colony to that boundary must be evident; our commissaries from pacific motives, from a respect to the report of the lords of trade and plantations and to his Majesty's gracious recommendation of an amicable settlement, conceded so far as to offer a twenty mile line as a boundary; if his Majesty should think fit, by confirming it, to surrender his right of jurisdiction and property to so great an extent of country, in favor of a charter government.

But there is no necessity of enlarging upon this head, since it is apprehended that, independent of the considerations which it furnishes, a single reflection will of itself be sufficient to expose the weakness of every argument which can be deduced from the examples of the Massachusetts Bay and Connecticut, to countenance a similar claim on the part of New Hampshire.

And to place our remark in a stronger point of light, every thing contended for—that we agreed with the one, and sat down quiet under the intrusions of the other, of those Colonies, from a conviction that both had a clear right to a twenty mile line from Hudson's river, might safely be admitted; and these concessions after all could not in the least advance the cause of New Hampshire.

Let it only be remembered that the Connecticut charter is prior by two years to the first establishment of this Colony; that the Massachusetts original charter was much more ancient; and that both claimed an extent to the South sea; while, on the other hand, Mason's grant, the old Colony of New Hampshire, is limited to the precise length of sixty miles; which did not approach Connecticut river within twenty miles; and the commission to Governor Wentworth, by which it is enlarged, is so recent as the year 1742, and expressly bounds it (without specifying any dimensions) on his Majesty's other governments: Hence then arises a fatal distinction between the cases. Besides the important circumstance of boundary, priority of establishment is asserted on the side of the Massachusetts Bay and Connecticut; but with respect to New Hampshire in its present form, it is unquestionably in favor of New York. Upon the same principles, therefore, that the two former Colonies claim beyond Connecticut river, ought New Hampshire to be confined to its Western banks; and thus, instead of being favorable to the pretensions of New Hampshire, by a parity of reason, as has so frequently been urged, do those cases, rightly considered, afford a solid and decisive argument against the encroachments of that government.

As to the second objection, the order requiring New Hampshire to support Fort Dummer, it is necessary to explain the occasion of it.

The Massachusetts Bay government before the determination of their dispute with New Hampshire, and while they claimed the country to the Northward of the boundary then established, and on the East as well as West sides of Connecticut river, erected this Fort for the defence and protection of their Northern frontier, and as a barrier against the French and Indians of Canada. When they were restricted to their just limits, they became desirous to be eased of the charge of supporting it, and to lay the burthen upon their neighbors; they, therefore, made a complaint in the year 1744, to the ministry, in which they were pleased to represent, that this Fort had fallen by the then late determination of their boundary, within the government of New Hampshire which ought to support it. An assertion evidently calculated to prejudice the rights of New York, and to justify their own encroachments to the Westward of Connecticut river.

On this misrepresentation the order was procured, importing the sense of the Crown that New Hampshire ought to maintain Fort Dummer, or it would be—

"perhaps in good policy and foresight, to secure to the Massachusetts people, by possession, the property of part of some controverted lands." 1 Doug. 424.

That the settlements did not take place without opposition from New York, is admitted by the same author. *"Anno 1726 (says he) some of the Massachusetts people, in settling Housatonick townships, were arrested to Albany Court, in an action of trespass against a grant to some Dutchman, from my Lord Cornbury, Governor of New York."* 1 Doug. 417.

In fact the government of New York considered and treated the settlements which were made in that part of the country, both under the Massachusetts Bay and New Hampshire, as acts of violence and encroachment; and by a public proclamation, dated the 28th day of July, 1753, commanded the sheriff of the County of Albany to arrest the intruders, that they might be prosecuted and punished.

come necessary to annex it to Massachusetts Bay, with a suitable district of country.

These being the facts, we observe

That it is notorious that the government of New Hampshire paid no obedience to the order ; but the Fort, during the whole of that war, continued to be supported by the province of the Massachusetts Bay, and yet no land was added to that Colony, by way of compensation, as the order intimated.

From hence it is reasonable to conclude, not only that the government of New Hampshire was apprised that the Fort did not lie within their limits, and therefore gave themselves no concern about the order ; but that the mistake was discovered by the Crown, and that the Massachusetts Bay for that reason was never gratified by the addition of land they had reason to expect. Nor is it difficult to account for the mistake itself : the officer who framed the order must doubtless have apprehended that the Fort was erected on the East side of Connecticut river. A presumption which can only free it from the inconsistency to which it must otherwise be subject ; while with this explanation nothing could have been more just and equitable ; for, as we have already observed, the Crown had but two years before extended the jurisdiction of New Hampshire over a district of extra-provincial lands on the East side of the river ; if that government therefore refused to follow the king's directions, there was no hardship in annexing the Fort, supposing it to lie on the East side of the river, with a suitable district of country on the same side, to the province of the Massachusetts Bay.

This reasoning appears to be the more conclusive, because it cannot be conceived that the Crown could mean to abridge the limits of New York, on account of a Fort which they had never been required to support.

Besides, if the order was capable of being construed in the latitude attempted, it could never have altered or impeached the rights of this Colony. It was an occasional instruction in the military line, in which our jurisdiction was not had in contemplation, in which we were not considered as parties, and which related to two different governments, and was procured *ex parte*, on the suggestion only of one of them.

It is certain that a circumstance so unimportant made no impression on the late Governor Wentworth, whose station gave him the best opportunity of being acquainted with the means by which the order was procured, and the spirit with which it was dictated.

It will appear that he clearly apprehended the nature of his commission ; that the Western extent of his province depended on the limits of New York ; and that, till they were made known to him, he must be at an utter loss for the exercise of his jurisdiction.

Almost from the date of his commission, till the year 1748, we were at war with Spain and France, and there was no room to think of the cultivation or improvement of the country. The French of Canada found us full employment on our frontiers which were continually harassed and destroyed.

On the 17th day of November, 1749, Governor Wentworth apprized the Government of New York, that he was directed by the Crown to grant the unimproved lands of New Hampshire ; but that the war had prevented his progress therein. That the prospect of a general and lasting peace with the Indians had now encouraged people to apply for lands, and particularly for some townships in the Western part of his government, which would fall in the neighborhood of New York. He therefore transmitted a description of New Hampshire, as the King had determined it ; and desired to be informed how far North of Albany the Colony of New York extended, and how many miles to the Eastward of Hudson's river, to the Northward of Massachusetts line, that he might govern himself accordingly.

This was behaving with prudence and candor ; and happy would it have been for New York, had he continued to be influenced by the same temper.

His letter was communicated by the Governor to the council of New York, on the 3d day of April, 1750, with the extract of Governor Wentworth's commission, expressing the boundaries of New Hampshire ; and his Excellency having required their sentiments, they advised him to acquaint Governor Wentworth in answer to his inquiry, "That the province of New York is bounded Eastward by Connecticut river, the letters patent from King Charles the second to the Duke of York expressly granting all the lands from the West side of Connecticut river, to the East side of Delaware Bay."

This advice was accordingly transmitted to Governor Wentworth, by a letter of the 9th day of April, 1750 ; and one would think it must have proved satisfactory. He saw that the Colony of New York was limited by the original grant to Connecticut river. He knew that his government was but lately established, and bounded upon the neighboring provinces ; but it seems his Excellency had no intention to give up the point so easily. He, therefore, in a letter to Governor Clinton, of the 25th day of April, 1750, acquaints him, that the information he had received from his Excellency, that it was the opinion of his Majesty's council that Connecticut river is the Eastern boundary of New York government, would have been entirely satisfactory to him, had not the charter governments of Connecticut and Massachusetts Bay extended their bounds many miles to the Westward of said river. That it being the opinion of his Majesty's council of that government, that New Hampshire had an equal right to claim the same extent of Western boundary ; he had in consequence of their advice, before Governor Clinton's letter came to hand, granted one township due North of Massachusetts line, and by measurement 24 miles East of the city of Albany. He concludes with these expressions. "Al-though I am prohibited by his Majesty's commission to interfere with his other government, yet it is presumed that I should strictly adhere to the limits therein ; and I assure you that I am very far from desiring to make the least encroachment, or set on foot any dispute on these points : It will, therefore, give me great satisfaction if, at your leisure, you can inform me by what authority Connecticut and the Massachusetts Bay governments claimed so far to the Westward as they have settled ; and in the mean time, I shall desist from making any further grants, on the Western frontier of my government, that may have the least probability of interfering with your government."

This letter was communicated to the council of New York, on the 5th day of June 1750, who advised their governor, in answer to Mr. Wentworth's inquiry by what authority Connecticut and Massachusetts Bay governments claimed so far to the Westward as they had settled : to acquaint him that the claim of the Colony of Connecticut is founded upon an agreement with this government on or about the year 1684 ; and that the Massachusetts' settlements, so far to the Westward, were made by intrusion ; and that it was probable that the township which he had lately granted, or some part of it, had already been granted by this government.

This advice was transmitted by letter from Mr. Clinton of the 6th day of June, 1750, which concludes with this passage. "From the information I have, there is reason to apprehend that the lands within the township you have lately granted, or part of them have been granted here. As my answer to your letter might probably have furnished you with objections against any grant which might interfere with this province, I am surprised that you did not wait till it came to hand before you proceeded therein. If it is still in your power to recall the grant, your doing so will be but a piece of justice to this government, otherwise I shall think myself obliged to send a representation of the matter to be laid before his Majesty."

Governor Wentworth's reply to this letter is dated the 22d day of June 1750 ; he informs Mr. Clinton, "That his Majesty's council of that Colony were unanimously of opinion not to commence a dispute with the government of New York, respecting the extent of the Western boundary of New Hampshire, till his Majesty's pleasure should be further known ; and that they had advised, that he should on the part of New Hampshire, make a representation of the matter to his Majesty relying that the same should be done on the part of New York ; and that whatever should be determined thereon, the government of New Hampshire would esteem their duty to acquiesce in, without further dispute, which he hoped would be satisfactory on that point."

He then proceeds to an apology for granting the township mentioned in his former letter ; intimating that it would not have been done, had Mr. Clinton's first letter arrived in time ; adding this memorable sentence. "*There is no possibility of vacating the grant, as you desire ; but if it falls, by his Majesty's determination, in the government of New York, it will be void of course.*"

The council of New York, on the 24th day of July, 1750, approved of the expedient proposed by Mr. Wentworth ; further advising that it would be for the mutual advantage of both governments to exchange copies of each others representations to his Majesty. And their opinion being communicated to Governor Wentworth by letter of the 25th day of July, 1750, this correspondence closed by Governor Wentworth's answer of the 3d day of September following, informing Mr.

Clinton, that the council of New Hampshire approved of the proposal that the representations to the Crown should be exchanged, as it might contribute to the speedy determination of the controversy, without expense on either side; promising to transmit Governor Clinton an authentic copy of his representation, as soon as it should be perfected.

From this relation, it appears that the government of New York acted with all possible candor and uprightness towards New Hampshire. That they gave all the satisfaction that could be expected with respect to their right; and although this was so clear and unexceptionable, cheerfully agreed to submit it to his Majesty's further determination.

It is to be wished that as much could be said in favor of the late Governor Wentworth. After engaging to transmit a copy of his representation to Governor Clinton, he changed his resolution, and forwarded it privately, without any notice to this government. It was contained in a letter to the lords of trade, dated the 23d day of March, 1750—1, but it was not until the 22d day of December 1752, that our Colony agent, by their lordship's directions, obtained a copy.

The representation, on the part of New York, was approved of and entered upon the minutes of the council, on the 18th day of October, 1751, and transmitted about the close of that year.

Within two years afterwards, complaint was made to this government of the encroachments under New Hampshire, on the lands and possessions of the New York grantees. It seems that the claimants of the township which Mr. Wentworth confessed in his letter of the 25th day of April, 1750, he had granted within 24 miles East from Hudson's river, were attempting to avail themselves of that grant.

Upon this occasion to maintain our jurisdiction, and prevent such encroachments for the future, the government of New York, on the 28th day of July, 1753, issued a proclamation for apprehending all persons, who should thereafter, under color of title from New Hampshire, take possession of lands granted by this province.

From this period the matter rested for some years; the incursions of the Indians immediately preceding the late war obstructing all new settlements, and the government of New York confiding that New Hampshire, after all that had passed, after being so fully premonished of our right, and agreeing to submit the determination without further controversy to his Majesty, would not have ventured to grant any more of the lands in dispute, until a final decision.

How much they were disappointed in these reasonable expectations remains to be shewn. But it would be improper to pass over in silence the claim of New Hampshire, as represented by Mr. Wentworth, since it may justly be concluded that if he had nothing substantial to offer in its support, it must be incapable of any vindication.

He aims at restricting both the Eastern and Northern limits of this Colony.

With respect to the Eastern boundary he relies—

1st. On the settlement between New York and Connecticut, at twenty miles distance from Hudson's river.

2d. He advances, as a fact, that the Massachusetts government *have allowed* New York to extend their claim also 20 miles East from that river, artfully representing their setting those bounds to their encroachments, as an act of favor and indulgence, when he was fully apprized that the government of New York complained of their possessing any of the country to the Westward of Connecticut river, as highly injurious.

3d. To prejudice the Crown against New York, he observes, that one Rensselaer claims 24 miles square on each side of the river: that it is a tract sufficient for thirty-two townships, of six miles square each, and comprehends more good land than any other subject enjoys in his Majesty's dominions; and yet that Mr. Rensselaer has not thought fit to contend with the Massachusetts Bay for the 24 miles. This is a strange exaggeration; the Rensselaer family are not indebted to the government of New York for their estate: they continue to enjoy it by an act of justice, and not of favor. It was originally a Dutch Colony of itself, granted to their ancestors by the Dutch West India company, who held it as a part of New Netherland, under the States General.

On the surrender, in 1664, their rights were secured to them, in common with the rest of the inhabitants, by the before mentioned article of the capitulation

granted on the surrender of the country, by Colonel Nicholls, the commander in chief under the Crown, and Lieutenant Governor under the Duke. The faith of government was pledged for their security ; and their estates were confirmed under the seal of this Colony, in the year 1635, not by the mere act of the provincial Governor and council, but by an express order from King James the second.

Nor, though immaterial, is it true that the lands are good in quality, they are in general very indifferent. Not that no subject has so much good land : The Penn, Baltimore, Fairfax and Granville families have much more. Nor that the Rensselaer family have never contended against the encroachments of the Massachusetts Bay ; for it is notorious that they have frequently solicited for the protection of government against those encroachments, and that more than once recourse has been had to arms, and blood been shed on that very account.

4th. Governor Wentworth, in his representation, further informs their lordships, that, presuming it would be his Majesty's pleasure that a North and South line should divide both the Massachusetts and New Hampshire from the government of New York, he had extended the Western boundary of New Hampshire as far West as the Massachusetts Bay had done theirs (that is) within 20 miles of Hudson's river.

This is again very uncandid. He puts New Hampshire upon the same footing as the Massachusetts, although he must have known there was not the least similarity in the cases ; the Massachusetts government considering their first charter in 1628-9, as of force at the time of the Duke's grant, and therefore restrictive of its limits ; but the King's commission which established New Hampshire in its present extent, being so recent as the year 1742.

Nor had he the least right to presume that the Crown would diminish New York, to enlarge New Hampshire ; for which, it is conceived, no reason could possibly be assigned. Nor had he, as he asserted, extended the Western boundary of New Hampshire to a twenty mile line from Hudson's river. On the contrary, so far was he from having seized that part of the country, that he had just before solemnly assured Governor Clinton, in his letter of the 22d day of June, 1750, *that he and his council were unanimously of opinion, not even to commence a dispute with this government, respecting the Western extent of New Hampshire, till his Majesty's pleasure should be further known* : condescending, at the same time, to apologize to Governor Clinton, (who had threatened to complain of him to the King) for the grant of one township, by ascribing it to the want of timely information of the limits of New York, and by telling him that though it was impossible to recall that grant, it would be void of course if his Majesty's determination should be in favor of New York.

5thly. In order to induce the Crown to abridge the Northern limits of New York, Governor Wentworth ventures upon this extraordinary assertion, (to wit) "It will be necessary to inform your lordships that the government of New York was founded upon a grant made by the Crown to the Duke of York, and that it was to commence at the sea, and run sixty miles North into the country, which line will cross Hudson's river, about twenty miles South of the city of Albany."

It is painful to remark, that in this passage Governor Wentworth pronounces as a fact, not only what was inconsistent with his own knowledge from the abstract of the Duke of York's grant, with which he had been furnished ; but what it was in every man's power to contradict by evidence which could not deceive ; the grant being on record both in England and New York.

True it is that the limits of New York depend entirely upon that grant. Except with respect to New Jersey, Connecticut and Quebec, they have never suffered the least alteration, but remain the same ever since it became an English Colony ; all commissions and instructions from the Crown, presupposing the boundaries to be clearly established by that grant, and to be notorious.

Does it contain a single word of Mr. Wentworth's description, (to wit) "*Commencing at the sea, and running sixty miles into the country*?" On the contrary, after describing several tracts, it proceeds to grant Hudson's river, and *all the land* from the West side of Connecticut river to the East side of Delaware Bay, and clearly includes the country under consideration.

This is the nature of the New Hampshire claim, recommended and enforced with every advantage by Governor Wentworth, its author, who best knew the reasons which gave rise to it, and the principles upon which it was founded ; and

it is submitted whether he has offered even the shadow of an argument in its support.

How then can his subsequent conduct towards New York be justified? No sooner was the conquest of Canada completed, and security, by that means, established in this part of America, than he reconciled it to himself to lay aside all restraint.

The country to the Westward of Connecticut river became an inviting object to many, and while the Colony of New York, (bound by the agreement with New Hampshire and the appeal to the Crown,) thought itself not at liberty to give them encouragement, Mr. Wentworth listened to applications from every quarter, and granted the lands without reserve.

Before this government had the least intimation of his intentions, he had, in the course of three or four years, patented upwards of one hundred townships, of six miles square each, dispersed over the whole face of the country, from the West side of Connecticut river down to the very borders of Lake Champlain.

But it was impossible such a plan could be executed without at length attracting the attention of this government; and it was no sooner known than they published a proclamation, dated the 28th day of December, 1763, stating the title and bounds both of New Hampshire and New York, as well as the many grants which the former government had unwarrantably issued; the attempts that had been made to settle under those grants, and the impositions which had been practiced on the inhabitants here by the sales of lands under the claim: To warn, therefore, the incautious from being longer deceived; to assert the right, and fully to maintain the jurisdiction of this Colony, all civil officers were required to exercise their respective jurisdictions and functions as far as the banks of Connecticut river, the undoubted Eastern limits of that part of the Colony. And the sheriff of the County of Albany, which then comprehended those lands, was enjoined to return to the commander in chief the names of all who, under the grant of New Hampshire, should hold the possession of any lands Westward of Connecticut river, that they might be proceeded against according to law.

About this time, Governor Wentworth's grantees, not contented with the vacant lands they had wrongfully usurped, began to enlarge their views, and to execute the design of seizing the estates and possessions of the inhabitants who, for many years, had been quietly settled under the title of New York: It was, therefore, thought highly necessary to solicit the Crown for the determination of a controversy which had been so serious and alarming.

Accordingly, on the 20th day of January 1764, the government of New York transmitted to the lords of trade a representation of the controversy, and of the proceedings of New Hampshire, and its emissaries, and urged the necessity of his Majesty's interposition.

The cause, soon after, upon the report of the lords of trade, came under the consideration of his Majesty in privy council, who was pleased on the 4th day of July following, to adjudge and determine "The Western banks of the river Connecticut, from where it enters the province of the Massachusetts Bay, as far North as the 45th degree of Northern latitude, to be the boundary line of the said two provinces of New Hampshire and New York." And to enjoin and require the respective governors and commanders in chief of his Majesty's said province of New Hampshire and New York, and all others whom it might concern, to take notice thereof and govern themselves accordingly.

That none might plead ignorance, the decree was soon after publicly notified by a proclamation of this government, inserted in the newspapers, and dispersed throughout the Northern parts of the Colony.

The nature of this royal adjudication has been greatly misrepresented.

In every question of boundary between two Colonies, the King, in privy council, exercises original jurisdiction, on the principles of feudal sovereignty. There can be no other tribunal.

The claims of New York and New Hampshire came judicially before his Majesty, by the authoritative acts of the governor and council of each, and by their mutual agreement and consent.

The question was not what bounds his Majesty would be pleased *thereafter* to establish between his two contending Colonies; but what were *then* the just extent and jurisdiction of each of them respectively.

The royal adjudication is accordingly expressed in terms which cannot be misconstrued; not directing that Connecticut river *shall become* the boundary be-

tween the two Colonies; but declaring the Western banks of that river *to be* the boundary.

Thence it follows that this is a royal adjudication, in the dernier resort, on the very point of right, in favor and confirmatory of the ancient jurisdiction of New York; and not a regulation of convenience and policy, by which an accession is acquired to its original limits.

Indeed, the latter cannot possibly be supposed. The occasion and nature of the appeal, as well as the clear and precise language of the decree, forbid it.

Soon after it was proclaimed, on the solicitation of the inhabitants, and for the better administration of justice, two new Counties, Cumberland and Gloucester, were erected out of the lands which had been claimed by the government of New Hampshire, and which had hitherto remained part of the County of Albany; and Cumberland County is now, on the petition of its inhabitants, represented in General Assembly.

It is suggested that the government of New Hampshire, not satisfied with the final determination even of the Crown, have lately received their solicitations, and employed their influence to procure an alteration of jurisdiction by a cession of a considerable part of the late controverted territory in their favor.

But it is conceived there are many weighty reasons which stand opposed to such a measure.

His Majesty, in privy council, after fully considering the merits of both claims has already, upon the clearest evidence of ancient right, been pleased to ascertain the Eastern boundary of New York; and it has the singular advantage of being distinguished and rendered obvious and unquestionable by a large river, instead of a simple line of marked trees which must be substituted in case of any innovation; and which, in jurisdictions so limited, is ever productive of public detriment in the administration of justice, and private inconvenience with respect to property.

In the next place, in full confidence of the wisdom, justice, and stability of the decision, among others, a great number of his Majesty's military subjects, entitled (in reward of their services) to lands by virtue of the royal proclamation of the 7th day of October, 1763, have obtained grants, under the seal of this Colony, for a great part of the country upon, and to the Eastward of Lake Champlain, the Wood Creek, and Hudson's River. They all consider themselves as deeply interested in enjoying their estates under the present jurisdiction; not only on account of the superior value and convenience of their lands while they continue a part of New York, but because, if they should be annexed to New Hampshire, a cloud will be raised over their titles, from an opinion which must in that case prevail, that in the sense of the Crown those lands never appertained to New York, and were appropriated without lawful authority.

Besides, as such an alteration would become an inlet to uncertainty of title, so must it entail upon the subject endless litigation and contention, and all the train of evils which are their usual concomitants; and, in this scene of confusion, both the improvement, and the peace of the country, must be sacrificed.

Again, if the inhabitants, who will be most effected, are worthy of attention, their wishes and prayers must prove a further obstacle to any change; a great majority of those who live in the Counties of Cumberland and Gloucester, having earnestly implored his Majesty that they may remain under the jurisdiction of this government, which they esteem a peculiar blessing and advantage. Nor is their solicitude without reason; whether we consider the constitution of this Colony as more immediately copied after, and corresponding with, that of the parent kingdom; or its easy and equal administration of justice; its eminent advantage for commerce or the superior value of its lands; in each of which respects, it is not excelled, if rivalled, by any of his Majesty's American plantations.

And lastly, it is conceived that no benefit can accrue to the Crown by the alteration which is sought after; since the inhabitants of this Colony are surpassed by none in loyalty and attachment to our gracious sovereign, and in just and dutiful sentiments of government; and since the royal revenue from the quit-rents, instead of being augmented, would be greatly diminished by restricting the ancient boundary of New York to enlarge New Hampshire.

Upon the whole, there seems to be too much reason to suspect that the advocates for an alteration of jurisdiction, are influenced by partial and sinister motives; or

they could not, after so solemn and final an adjudication, desire what is inconvenient and impolitic in itself; injurious to the just and ancient rights of New York; and must not only prove hurtful to the interest of all who are possessed of property in that part of the Colony, but be productive of endless controversy, disquiet and confusion.

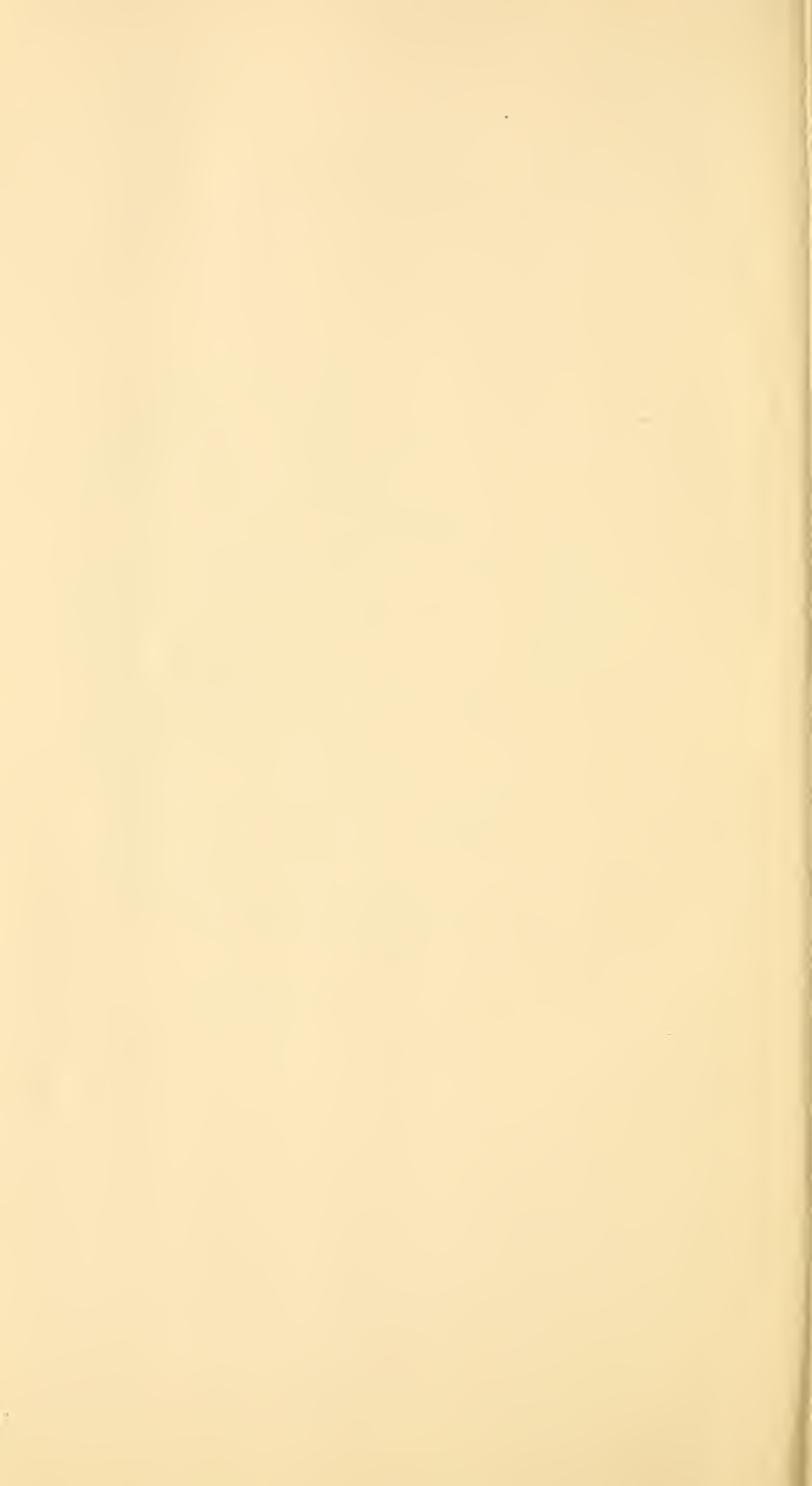
By order of the General Assembly,

JOHN CRUGER, *Speaker*.

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